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Coalition Of Automobile Retailers, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

| | |
|-------------------------------|---|
| -----X | |
| NEW JERSEY COALITION OF | : |
| AUTOMOTIVE RETAILERS, | : |
| INC., a non-profit New Jersey | : |
| Corporation, | : |
| | : |
| Plaintiff, | : |
| | : |
| v. | : |
| | : |
| MAZDA MOTOR OF AMERICA, | : |
| INC., | : |
| | : |
| Defendant. | : |
| -----X | |

Civil Action No. 3:18-cv-14563
(BRM)(TJB)

**DECLARATION OF JAMES B.
APPLETON IN OPPOSITION
TO MAZDA MOTOR OF
AMERICA, INC.'S MOTION TO
DISMISS**

I, JAMES B. APPLETON, of full age, hereby declare as follows:

1. I am the President of plaintiff New Jersey Coalition of Automobile Retailers, Inc. ("NJ CAR"). I make this Declaration in opposition to the motion to dismiss filed by defendant Mazda Motor of America, Inc. ("Mazda"). I have personal knowledge of the facts stated herein.

2. NJ CAR, a New Jersey not for profit corporation founded in 1918, is a trade association consisting of franchised new motor vehicle dealers in the State of New Jersey.

3. NJ CAR serves the interests of its motor vehicle dealer members in several different ways: (1) it promotes the interests of franchised new car and truck retailers with governmental entities, the media and the public at large; (2) it provides its members with information on statutory, regulatory, and legislative matters affecting the interests of motor vehicle retailers; (3) it offers educational and training programs to employees of its members on best business practices, to enhance their professionalism and expertise and to promote compliance with law; and (4) it offers services to its members to enhance their businesses and that comply with legal requirements.

4. NJ CAR seeks to protect the interests of motor vehicle consumers by (1) providing them with comprehensive information related to their vehicle purchases; (2) promoting fair competition among its dealer members; (3) ensuring consumer access to multiple fairly competing dealerships throughout the State; (4) facilitating dialogue between consumers and dealerships in the event of a dispute; and (5) prioritizing the safety of drivers by ensuring that multiple dealerships can service their vehicle and address any safety recalls.

5. NJ CAR also actively represents New Jersey motor vehicle dealers in legislative and regulatory matters.

6. There are currently sixteen Mazda franchised dealers in New Jersey, each of which is a member of NJ CAR. Attached hereto as Exhibit A is true and correct copy of a list identifying all sixteen Mazda dealer members of NJ CAR, which has been and is currently available to the public on NJ CAR's website at http://www.njcar.org/njcar/dsp_members.cfm.

7. Upon information and belief, Mazda is a California corporation founded in 1970.

8. Mazda manufactures and markets motor vehicles for sale through dealers in the State of New Jersey and throughout the United States. Mazda's line of vehicles includes sedans, hatchbacks, crossovers, SUVs and sports cars.

9. In 2018, Mazda introduced the Mazda Brand Experience Program 2.0 ("MBEP") and began implementing it on July 3, 2018. Attached hereto as Exhibit B is a true and correct copy of a Mazda Brand Experience Program brochure prepared by Mazda with an Effective Date of July 3, 2018 and setting forth the Terms & Conditions as of September 24, 2018.

10. The MBEP establishes an elaborate two-tiered pricing regime that enables Mazda dealers to earn discounts or bonuses for each vehicle a dealer sells based on its compliance with certain conditions.

11. The MBEP offers these tiered discounts or bonuses as a percentage of the Manufacturer's Suggested Retail Price ("MSRP") on a per vehicle basis ranging from 6.5% to 0% depending on the degree of compliance with the MBEP.

12. To qualify for any payments under the MBEP, a Mazda dealer must achieve several base qualifiers. Those Mazda dealers that achieve all of the base qualifiers are eligible for two discounts.

13. One discount provided under the MBEP is a brand commitment element payment based on facilities and other requirements that provides up to a 4.5% discount. The MBEP places Mazda dealers into four categories that qualify for the full 4.5% discount, a portion of the 4.5% discount or no discount at all.

14. Mazda dealers that have an exclusive Mazda facility that incorporates all Mazda required image elements, satisfies other "base elements" and employs a Dedicated Exclusive General Manager are designated as Retail Evolution ("RE") dealers that qualify for the full 4.5% brand commitment element discount or bonus.

15. Mazda dealers that satisfy all of these facility elements but that do not employ a Dedicated Exclusive General Manager are designated as Exclusive dealers that qualify for 2.8% of the 4.5% brand commitment element discount or bonus.

16. Mazda dealers that have an exclusive Mazda showroom that does not incorporate all Mazda required image elements are designated as Exclusive Showroom dealers that only qualify for 1.0% of the 4.5% brand commitment element discount or bonus.

17. Mazda dealers that do not have an exclusive Mazda facility are designated as Dual dealers that do not qualify for any portion of the 4.5% brand commitment element discount or bonus.

18. The other discount provided under the MBEP is a customer experience element payment based on Mazda's calculation of "customer experience" at the dealership. It provides up to a 2.0% discount off of the MSRP.

19. Although RE dealers, Exclusive dealers, Exclusive Showroom dealers and Dual dealers all are eligible for this "customer experience" discount, only those Mazda dealers that meet the customer experience requirements each quarter receive the 2.0% customer experience element discount for that quarter. The other dealers receive nothing.

20. In sum, RE dealers have the potential to earn up to 6.5% of the MSRP per vehicle sold, Exclusive dealers have the potential to earn up to 4.8% of MSRP per vehicle sold, Exclusive Showroom dealers have the potential to earn up to 3.0% of MSRP per vehicle sold, and Dual dealers have the potential to earn up to 2.0% of MSRP per vehicle sold.

21. Mazda is only guaranteeing payments to its dealers under the MBEP for compliance therewith for a four-year period.

22. Mazda offers no justification for making the modifications necessary to qualify for at least a portion of the 4.5% brand commitment element discount, and provides no exceptions for any dealers unable to comply with the MBEP requirements.

23. Shortly after Mazda introduced the MBEP, I was contacted by Mazda dealers in New Jersey, including Maxon Auto Enterprises d/b/a Maxon Mazda ("Maxon") and SIL, LLC d/b/a Irwin Mazda ("Irwin"), and was informed of the upcoming implementation of the MBEP. These dealers were concerned that the implementation of the MBEP would violate their protected interests and rights under the New Jersey Franchise Practices Act ("FPA").

24. On or about June 28, 2018, after having such informal discussions with Mazda dealer members, I formally met with representatives of

several Mazda dealer-members to discuss the legality of the MBEP and its impact on their dealerships and ability to compete.

25. Maxon, Irwin and other dealers again voiced their concern that the MBEP violated their rights under the FPA and would significantly impact their businesses and hamper their ability to fairly compete.

26. Other Mazda dealers, those in a position to comply with the MBEP's eligibility requirements, indicated that they could take advantage of the offered discounts or bonuses.

27. None of the Mazda dealers present at the meeting expressed the thought that two-tiered pricing in general is a good idea or that manufacturers should be free to violate established New Jersey law.

28. The By-Laws of NJ CAR grant authority to me, as the President of NJ CAR, to decide to file lawsuits on NJ CAR's own behalf or in a representative capacity on behalf of its members. Attached hereto as Exhibit C is a true and correct copy of the By-Laws of NJ CAR.

29. Shortly after the meeting with Mazda dealers, I consulted with and discussed the issues raised by the implementation of the MBEP with members of NJ CAR's Executive Committee and with the Chairman of the Executive Committee, Rob Larson. Mr. Larson subsequently advised me that the Executive

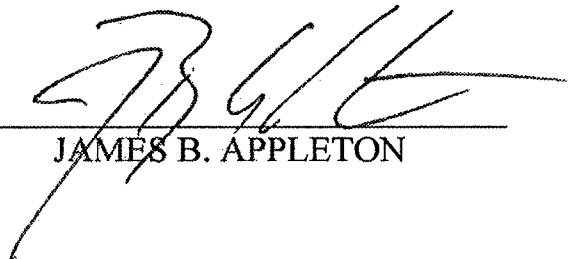
Committee would defer to me as to whether NJ CAR should institute litigation against Mazda for implementing the MBEP in New Jersey in violation of the FPA.

30. In accordance with the By-Laws, I ultimately decided that NJ CAR would file a lawsuit against Mazda to prevent the continuing implementation of the MBEP.

31. On September 17, 2018, as part of my President's Report during the annual NJ CAR membership meeting, I advised NJ CAR members that NJ CAR intended to file suit against Mazda.

32. On October 2, 2018, NJ CAR filed the instant lawsuit seeking a declaratory judgment that the MBEP violates the FPA on its face, and that Mazda's implementation of the MBEP in the State of New Jersey is thus unlawful. Attached hereto as Exhibit D is a true and correct of NJ CAR's Complaint dated October 2, 2018.


Pursuant to 28 U.S.C. § 1746, I hereby certify that the foregoing statements made by me are true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.








JAMES B. APPLETON

Dated: November 30, 2018

EXHIBIT A












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Display dealership names beginning with:

| | | | | | | | |
|-----|-----|-----|-----|-----|-----|-----|-----|
| A-B | C-D | E-G | H-K | L-M | N-P | Q-S | T-Z |
|-----|-----|-----|-----|-----|-----|-----|-----|

Search for dealerships by manufacturer and county:

Manufacturer:

County:

Search results:

- ▣ All American Mazda in Brick
- ▣ Chapman Ford Lincoln Mazda
- ▣ Crystal Motors
- ▣ Hamilton Mazda Volkswagen, Inc.
- ▣ Irwin Lincoln Mazda
- ▣ Lester Glenn Mazda
- ▣ Maple Shade Mazda
- ▣ Maurice Schwartz & Sons, Inc.
- ▣ Maxon Hyundai Mazda
- ▣ Mazda of Lodi
- ▣ Open Road Mazda
- ▣ Open Road Mazda of Morristown
- ▣ Ramsey Mazda
- ▣ Route 1 Mazda-Woodbridge
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EXHIBIT B



MAZDA BRAND EXPERIENCE PROGRAM

Mazda Motor of America, Inc., d/b/a Mazda North American Operations ("Mazda") is pleased to announce the Mazda Brand Experience Program ("MBEP"), effective July 3, 2018. MBEP is designed to support those dealers who are engaged and committed to the Mazda brand and consistently provide all customers with an ownership experience that exceeds their expectations.

Effective July 3, 2018

Terms & Conditions as of 2018.09.24

MAZDA BRAND EXPERIENCE PROGRAM



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MAZDA BRAND EXPERIENCE PROGRAM**Section 1: Overall Program Terms and Conditions****1.1 MBEP Dates and Timing**

The MBEP program will begin July 3, 2018, and end with the final sales close for June, 2022. Each MBEP earning period is comprised of a Mazda designated month, which follows the new vehicles sales close dates ("MBEP Earning Month"). All program qualifiers must be met prior to each individual MBEP Earning Period, in accordance with the following schedule:

| Type | Item | Qualifier Timing |
|-------------------|---|---|
| Base Qualifier | Facility Image & Type Inspection | Status as of 25th of calendar month preceding each MBEP Earning Month |
| | Training | Status as of last day of sales close quarter preceding MBEP Earning Month |
| | MSS X-Time | Status as of last day of calendar month preceding each MBEP Earning Month |
| | CX360 Record Health | Rolling 3 calendar month period preceding each MBEP Earning Month |
| | MCVP | Rolling 3 calendar month period preceding each MBEP Earning Month |
| | | |
| Element Qualifier | Brand Commitment – Dedicated Exclusive General Manager | Status as of 25th of calendar month preceding each MBEP Earning Month |
| | Customer Experience – CX360 Index Score and Survey Health | Rolling 3 calendar month period preceding MBEP Earning Month |

1.2 Ineligible States

This program is currently not available in the states of Hawaii, Kentucky, North Carolina, and Vermont.

1.3 Eligible Dealers

All full service Mazda Dealers of record in eligible states are eligible to participate in MBEP while active during the program period; acknowledgement of Terms and Conditions of the MBEP program is required. Service only dealers are neither eligible nor included in MBEP.

1.4 Program Enrollment/Acknowledgement

Dealers must acknowledge the Terms & Conditions within the MBEP website to be eligible for any MBEP Earnings. Acknowledgement must take place prior to end of sales month preceding MBEP Earning Month to be eligible to qualify and earn under this program. New dealers must acknowledge the Terms & Conditions or opt out of the program on the MP3 form as part of their new dealer enrollment process and will be active in the Mazda Brand Experience Program upon dealer activation.

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1.5 Payment Terms

MBEP consists of monthly payments. Payments will be calculated as a percentage of Base MSRP of each retail unit sold, rounded to the nearest dollar for each MBEP Earning Element. Mazda reserves any and all rights to adjust percentages upon written notification.

1.6 Other Terms

If any legal or administrative action is brought or threatened by any party to enjoin or prohibit any or all of MBEP, Mazda reserves the right, in its sole and absolute discretion, to suspend any and all payments pursuant to MBEP and/or to modify or cease to offer MBEP, with no liability whatsoever to any dealer. Should Mazda be prohibited by any federal, state or local law, rule or regulation or a determination by any judicial or administrative body from continuing MBEP in any or all state(s), MBEP shall automatically terminate and Mazda shall have no liability whatsoever to any dealer in the state(s) where MBEP is terminated. Further, Mazda reserves the right to cancel, amend, or revoke the policies, and/or any program at any time, for any or no reason, and the Dealer agrees that it will make no claim to Mazda for anticipated benefits or lost opportunity under a cancelled program or revised or cancelled policies.

1.6a Allowance for circumstances beyond the control of Mazda Dealers

- Disasters:
 - In circumstances when the Mazda Dealership and/or the SOA of the dealer is affected by an event beyond the Mazda Dealership's reasonable control, including, without limitation: fires, floods, storms or other acts of God, any law or regulation of any governmental entity, foreign or civil wars, riots, interruptions of navigation, shipwrecks, strikes, lockouts or other labor troubles, embargoes, or blockades, Mazda reserves the right to adjust any and/or all MBEP Element target(s) at Mazda's sole and absolute discretion.
- Large Scale Communication Technology Provider Interruptions:
 - In circumstances when verified large scale communication industry interruptions that prevent dealer from transmitting required information to Mazda, Mazda, at its sole and absolute discretion, may review, and if necessary, allow for late transmission of data.

1.6b Circumstances beyond the control of Mazda

Mazda shall not be liable for any events beyond Mazda's reasonable control, including, without limitation: fires, floods, storms or other acts of God, any law or regulation of any governmental entity, foreign or civil wars, riots, interruptions of navigation, shipwrecks, strikes, lockouts or other labor troubles, embargoes, or blockades. In such events Mazda reserves the right to review, adjust, and if necessary, make adjustments to MBEP.

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MAZDA BRAND EXPERIENCE PROGRAM



Section 2: Overall Program Structure

MBEP is comprised of two major categories of Earning Elements (each, an "Earning Element"). To be eligible for each Earning Element, a dealer must meet all applicable Base Qualifiers (each, a "Base Qualifier"). In addition, a dealer may be required to meet additional Earning Element Qualifiers (each, an "Element Qualifier") as set forth in section 2.2.

Important Note

Each of the following MBEP Base Qualifiers are governed by unique Terms and Conditions, located in Section 3.

2.1 Base Qualifiers

1. Facility Image & Facility Type Inspections – As of the 25th of the month prior to an MBEP Earning Month, a dealership must have passed the most recent Image Inspection. Retail Evolution, Exclusives and Exclusive Showroom dealerships must also pass the most recent Facility Type Inspection for the approved Facility Type of records by the 25th of the month prior to an MBEP Earning Month.
2. Training – Minimum 90% Certification requirements results as of the end of each sales close quarter will determine payouts for the following three MBEP Earning Months.
3. Mazda Service Scheduler (MSS-XTime) – By the end of the month prior to the MBEP Earning Month, meet enrollment requirement.
4. CX360 – During the three month period prior to the MBEP Earning Month, meet minimum performance requirement for record health measurement.
5. Mazda Courtesy Vehicle Program (MCVP) – During the three months prior to the MBEP Earning Month, maintain number of units required in MCVP objective for minimum of 80 percent of the days.

2.2 Earning Elements

Important Note

Each of the following MBEP Earning Elements are governed by unique Terms and Conditions, located in Section 4.

1. Brand Commitment

- o Potential earnings are tiered based on facility type (Exclusive Retail Evolution, Exclusive, Exclusive Showroom). See Mazda Facility & Image Site for Mazda Facility Type Definitions Under Facility/RE tab.
- o The Brand Commitment Element is paid monthly.
- o Retail Evolution stores must achieve the following Element Qualifier for Retail Evolution level payment:
 - Dedicated exclusive General Manager requirement

2. Customer Experience

- o The Customer Experience Element is paid monthly. Customer Experience Element Qualifiers listed below must be achieved to be eligible for payout:
 - Meet minimum performance requirement for CX360 score (top 75% of dealers) or achieve an index score of 84 or higher. Requirements subject to quarterly adjustment.
 - Maintain minimum 75% Survey Health
 - Customer Experience Earning Qualifiers are assessed monthly but can be tracked and viewed daily within the MBEP website.

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MAZDA BRAND EXPERIENCE PROGRAM



2.3 Earnings Structure Overview

Earnings calculated on percentage of Base MSRP of eligible retail vehicles in a month, rounded to the nearest dollar.

| Element | Facility Type | | | |
|---------------------|----------------|--------------------|--------------------------|-------|
| | Exclusive (RE) | Exclusive (Non-RE) | Exclusive Showroom (ESR) | Dual |
| Brand Commitment | 4.50%* | 2.80% | 1.00% | 0.00% |
| Customer Experience | 2.00% | 2.00% | 2.00% | 2.00% |

* In addition to the Base Qualifiers, RE dealerships must achieve Exclusive Dedicated General Manager qualification to be eligible for RE level payout; otherwise earning will drop down to Exclusive level payout.

2.4 Program Payment Calculation

Payment amounts will be determined as follows:

At the close of each program month, based on the Mazda dealership's achievement of six Base Qualifiers noted in Section 2.1, and any additional Element Qualifiers (General Manager for Retail Evolution, 75% Survey Health and Performance Requirement for CX360); all achieved Brand Commitment Element and Customer Experience Element target payments will be based on the Mazda dealer's Eligible New Vehicle Sales (described in Section 2.5) for the month.

Program Earnings and Payment Calculation EXAMPLES

Scenario 1

| | RE | EXCL | ESR | DUAL |
|---|------------------|------------------|------------------|------------------|
| Base Qualifiers | | | | |
| - Facility Image & Inspection | Achieved | Achieved | Achieved | Achieved |
| - Training | Achieved | Achieved | Achieved | Achieved |
| - MSS X-Time | Achieved | Achieved | Achieved | Achieved |
| - MCVF | Achieved | Achieved | Achieved | Achieved |
| - CX360 Record Health | Achieved | Achieved | Achieved | Achieved |
| Brand Commitment Earning Element [Dedicated GM-RE Only] | Achieved 4.5% | Achieved 2.8% | Achieved 1.0% | Not Applicable |
| Customer Experience Earning Element | | | | |
| - Top 75 percentile index score | Achieved | Achieved | Achieved | Achieved |
| - Survey Health 75%+ | Achieved 2.0% | Achieved 2.0% | Achieved 2.0% | Achieved 2.0% |
| Total Earnings | 6.5% | 4.8% | 3.0% | 2.0% |
| Payment example on \$26,500 vehicle | \$1,723 | \$1,272 | \$795 | \$530 |

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MAZDA BRAND EXPERIENCE PROGRAM



Scenario 2

| | RE | EXCL | ESR | DUAL |
|--|--------------|--------------|--------------|----------------|
| Base Qualifiers | | | | |
| - Facility Image & Inspection | Achieved | Achieved | Achieved | Not Achieved |
| - Training | Achieved | Achieved | Not Achieved | Achieved |
| - MSS X-Time | Achieved | Not Achieved | Achieved | Achieved |
| - MCVP | Not Achieved | Achieved | Not Achieved | Not Achieved |
| - CX360 Record Health | Achieved | Achieved | Achieved | Achieved |
| - | | | | |
| Brand Commitment Earning Element [Dedicated GM -RE Only] | Not Achieved | Not Achieved | Not Achieved | Not applicable |
| | 0.0% | 0.0% | 0.0% | |
| Customer Experience Earning Element | | | | |
| - Top 75 percentile index score | Achieved | Achieved | Achieved | Achieved |
| - Survey Health 75%+ | Achieved | Achieved | Achieved | Achieved |
| | 0.0% | 0.0% | 0.0% | 0.0% |
| Total Earnings | 0.0% | 0.0% | 0.0% | 0.0% |
| Payment example on \$26,500 vehicle | \$0 | \$0 | \$0 | \$0 |

Scenario 3

| | RE | EXCL | ESR | DUAL |
|--|--------------|----------|----------|----------------|
| Base Qualifiers | | | | |
| - Facility Image & Inspection | Achieved | Achieved | Achieved | Achieved |
| - Training | Achieved | Achieved | Achieved | Achieved |
| - MSS X-Time | Achieved | Achieved | Achieved | Achieved |
| - MCVP | Achieved | Achieved | Achieved | Achieved |
| - CX360 Record Health | Achieved | Achieved | Achieved | Achieved |
| - | | | | |
| Brand Commitment Earning Element [Dedicated GM -RE Only] | Not Achieved | Achieved | Achieved | Not applicable |
| | 2.8% | 2.8% | 1.0% | |
| Customer Experience Earning Element | | | | |
| - Top 75 percentile index score | Achieved | Achieved | Achieved | Achieved |
| - Survey Health 75%+ | Achieved | Achieved | Achieved | Achieved |
| | 2.0% | 2.0% | 2.0% | 2.0% |
| Total Earnings | 4.8% | 4.8% | 3.0% | 2.0% |
| Payment example on \$25,620 vehicle | \$1,272 | \$1,272 | \$795 | \$530 |

2.5 Eligible New Vehicle Sale

New Mazda vehicles reported sold and delivered to the Ultimate Consumer as defined in the Mazda Sales Policies and Procedures Manual under the following Sale Type Codes are Eligible Vehicle Sales under the Program:

- 'R' Retail Sales

Retail Sales Date

For the purposes of MBEP, the Retail Sale Date is the date the Ultimate Consumer takes physical possession of a vehicle and signs the Delivery Checklist, not the date on which the selling Dealer reports the vehicle as sold to Mazda (RDR). New vehicle RDRs must be entered by the end of the 2nd calendar day following sales month close to be included in the month's payment; any RDRs entered later than two (2) calendar days post vehicle sales month but not later than 90 days post retail sales date will be processed in the following month; any RDRs entered later than 90 days will not be eligible for payments.

See Mazda Sales Policies and Procedures Manual for further information about sales reporting requirements.

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MAZDA BRAND EXPERIENCE PROGRAM



2.6 Ineligible Vehicle Sale

All New Mazda Vehicles reported sold or placed into demonstrator service under any of the following Sale Type Codes shall not be eligible under MBEP, with the exception noted for Dealer Demonstrators and Final Reported vehicles.

- 'C' Commercial Sales
- 'L' Mazda Courtesy Vehicles (Service Loaners)
- 'F' Fleet Sales
- 'M' Mazda Special Sales
- 'D' Dealer Demonstrators
 - Dealer Demonstrators may become eligible under MBEP if the vehicle is actually sold at retail ("R" sale type code), delivered to the Ultimate Consumer, and reported as sold to Mazda, provided such sale meets the requirements of an eligible sale.
- 'P' Final Reported
 - Final Reported vehicles may become eligible under MBEP if the vehicle is actually sold at retail ("R" sale type code), delivered to the Ultimate Consumer, and reported as sold to Mazda, provided such sale meets the requirements of an eligible sale

Furthermore, any Mazda vehicle that meets any of the following criteria, regardless of the Sale Type, will not be eligible under the Program:

- A. Any vehicle purchased through or from an Auto Auction
- B. Any vehicle sold, transferred, and/or wholesaled to another dealership or another third party, where the vehicle is not delivered to the Ultimate Consumer by the Dealer
- C. Any vehicle sold, leased, or delivered to a resident outside the United States
- D. Any vehicle that has been in demonstrator or lease status at Mazda North American Operations
- E. A damaged vehicle that is nonsalable as a new vehicle to an Ultimate Consumer, e.g. a major damaged vehicle such as an MDV-2 (repairable only to used vehicle standards) or an MDV-3 (a total loss vehicle, not repairable to new or used vehicle standards)
- F. Any vehicle that has been declared a total loss, issued a salvage title, and/or been subject to an insurance pay-off (e.g. a vehicle that has been subject to theft, fire, collision, flood, tornado, hurricane, or other natural disaster)
- G. 'R' Sales to Dealer not meeting the terms of the MNAO Sales Policy
- H. Any vehicle sold to an entity with the intent to resell within three (3) months of the Retail Sale Date See

Mazda Sales Policies and Procedures Manual for further information.

2.7 Program Sales Reversal and Chargeback

An RDR reversal of an Eligible New Vehicle Sale(s) at any future date will result in a reduction of payment in the month the Reversal occurs and at the original amount paid.

2.8 Dealer Element Reporting Timing

There is no monthly reporting grace period for any qualifier. All Base Qualifier deadlines are final.

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MAZDA BRAND EXPERIENCE PROGRAM



2.9 Payment Timing

The monthly MBEP Earnings will be calculated by the 15th calendar day after the close of each MBEP month and will be available on the MBEP website and reports. Payments will be made by approximately the 20th calendar day after the close of each month.

2.10 Mazda Standard Accounting Guidelines

Acceptable Dealer Accounting Options - Mazda Dealers are requested to credit all MBEP Payments paid to the following financial statement accounts:

1. **Account 8027** – Mazda Retail Program – Brand
2. **Account 8028** – Mazda Retail Program – Cust. Experience

Dealer Accounting Options:

- A. **Accrual Basis Example:** Record your dealership-determined estimate of monthly MBEP Earnings when an Eligible New Vehicle is retailed. Debit Account 1139, Mazda Retail Program, monthly, and Credit estimated funds to the appropriate Mazda Retail Program Account as defined above.
- B. **Cash Basis Example:** Record monthly MBEP Earnings if a payment is received from Mazda for the program month. Debit Account 1003 Cash in Bank, and Credit the appropriate Mazda Retail Program Account as defined above.

* See the Mazda Standard Accounting Guide for complete accounting guidelines located in The Mirror – Select Support, then Accounting Manual:

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TREND ANALYSIS REPORTS CUSTOM REPORTS BUSINESS PLAN DEALER DETAILS MY SETTINGS FS SUBMISSION SUPPORT

Trend Analysis
KPI Ranking Analysis

[Home](#) » [Trend Analysis](#)

National / Region:

District:

Dealer:

Time Period:

From:

To:

Chart Value:

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Section 3: Base Qualifier Details

3.1 Base Qualifier – Facility Image & Type Inspections

- All dealership facilities must pass any on-site facility IMAGE inspection and all RE, Exclusive and Exclusive Showroom facilities must also pass the applicable TYPE inspection.
 - Dealer submission of Acknowledgement & Agreement in the Mazda Facility and Image (MFI) Program is located on MXConnect in the Mazda Facility & Image (MFI) site.
 - See On-Site Image Evaluation Process Information on the Mazda Facility & Image (MFI) site accessible via MXConnect.
 - New dealers must schedule and pass MFI Inspections within 90 days of their activation date to be eligible to retain any earned MBEP Element Payments.
- Retail Evolution MBEP Facility Type Escrow Allowance
 - Dealers committed to an Exclusive Retail Evolution facility could be eligible for escrow allowances. See Mazda Retail Evolution Program Terms and Conditions for detailed overview of escrow eligibility.

* All payments made are subject to chargeback should the dealership fail to complete its commitment to the Retail Evolution project or withdraw from the program. Contact your regional development department for more specific details.

3.2 Base Qualifier - Training

The Training Base Qualifier Requirement encourages Mazda Dealers to maintain a fully trained Mazda staff.

- Certification-requirement results from the prior sales-close quarter determine eligibility for the following three MBEP Earning Months.
- Dealerships are expected to maintain ONE HUNDRED PERCENT (100%) of their eligible personnel as ONE HUNDRED PERCENT (100%) "Certified". MNAO recognizes that due to turnover and changes that occur due to normal business operations, there may be points in time when the level drops below 100%. To account for these instances, the minimum training Base Qualifier shall be NINETY (90%) of eligible personnel who must be ONE HUNDRED PERCENT (100%) Certified. Because the Training Qualification Requirement has been reduced to NINETY PERCENT (90%), any percentage below NINETY PERCENT (90%) shall not meet the Training Base Qualifier, including any deficiencies later determined upon audit of company personnel records. A Dealer may not submit an appeal for failing to meet the NINETY PERCENT (90%) level.
- **Source of certification calculation will be web report M803391-1.**
- Required primary job codes are listed in the chart below.
- Training requirements are updated at the beginning of each quarter, and training must be completed by the end of the quarter prior to the new MBEP Earning Month. Applicable Sales, Service, Parts, Warranty, and Technical employees should refer to the current Certification Catalog on *Mazda State* for a list of identified and required training.
 - Dealers are responsible for entering into the eMDCS Personnel system accurate, up-to-date employee personnel information as of the date of hire.
 - ☐ In the event dealership personnel are employed at two or more dealerships with common ownership, the employee's information in the eMDCS Personnel system at each dealership is required to be an exact match. The employee's associated training information will be listed only on the Mazda State Personnel list of the primary dealership.
 - ☐ If a Warranty Administrator is an employee of record at a Mazda dealership and performs warranty administration for multiple Mazda stores with common ownership, the employee is

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required to have identical eMDCS information at each dealership. If the eMDCS information is identical, the training records on Mazda State will follow the employee.

- ☐ If a Warranty Administrator is a Contractor or Consultant and not an employee of record at any Mazda dealership, these individuals should use job code D999 at each dealership.
- ☐ Any employee in Mazda's eMDCS records re-hired at the same dealership or an affiliated dealership within 30 days of a prior termination from the same or an affiliated dealership may result in an audit.
- ☐ Employee training records are available on Web Report M803391-1 to track employee completion and grace period status.
- ☐ Additional Training Base Qualifier Compliance Policy can be found in Section 5.
- New, Re-hire and Existing Employees Defined
 - ☐ A new employee is defined as a person who has never been employed by a Mazda dealership and not already listed in Mazda's eMDCS Personnel records.
 - ☐ A re-hire employee is defined as a person who has been previously employed by any Mazda dealership and listed in Mazda's eMDCS Personnel records.
 - ☐ An existing employee is defined as a person who is currently employed by a Mazda dealership and is currently listed in Mazda's eMDCS Personnel records.

| Eligible eMDCS Primary Job Codes/Titles | | |
|---|----------|-------------------------------------|
| | Job Code | Title |
| | D101 | Sales Director |
| | D102 | Sales Manager |
| | D103 | Assistant Sales Manager |
| | D106 | Fleet Manager |
| | D108 | F&I Manager |
| | D111 | Sales Consultant (New) |
| | D120 | Internet Sales Manager |
| | D121 | Internet Sales Consultant |
| | D199 | Other New Vehicle Sales |
| 10 | D201 | Used Car Sales Director |
| 11 | D202 | Used Sales Manager |
| 12 | D211 | Used Sales Consultant |
| 13 | D299 | Other Used Car |
| 14 | D300 | Service & Parts Director or Manager |
| 15 | D301 | Service Director |
| 16 | D302 | Service Manager |
| 17 | D303 | Assistant Service Manager |
| 18 | D306 | Customer Relations Manager |
| 19 | D309 | Customer Relations Coordinator |
| 20 | D311 | Service Consultant |
| 21 | D328 | Warranty Admin |
| 22 | D350 | Technician |
| 23 | D400 | Parts & Service Director/Manager |
| 24 | D401 | Parts Director |
| 25 | D402 | Parts Manager |
| 26 | D403 | Assistant Parts Manager |
| 27 | D411 | Lead Counter Person |
| 28 | D412 | Parts Consultant/Counter Person |

- **Training Grace Periods** – The following grace periods are in place for employees to complete the required training courses:
 - **Changes to Required Training Courses** - Due to the introduction of new products, methods, and technologies, training courses frequently change. Mazda reserves the right to change or amend existing courses at any time in its sole and absolute discretion. Mazda shall communicate changes to

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required certification via Mazda's Dealer Email system. Mazda will add new Web-Based Training (WBT) courses into the dealer certification path no less than 30 days before the end of the quarter to allow dealer employees time to complete the training requirements. All eligible job codes and titles must complete new training as set forth below:

- ☐ Active Sales, Service, Parts, Warranty, and Technical employees must complete required courses prior to the end of the quarter preceding the MBEP Earning Month* to meet training requirement.
- **New Employees:**
 - ☐ New Sales, Service, Parts, Warranty and Technicians (D350) will have a 60-day grace period to complete training requirement.
- **Re-hired Employees** – When an individual is re-hired by a different dealership than the most recent dealership from which employee was terminated:
 - ☐ Re-hired Sales, Service, Parts, Warranty, and Technicians (D350) will have a 60-day grace period to complete training requirement.
- **Re-hired Employees** – When an individual is re-hired by the same dealership from which employee was most recently terminated:
 - ☐ Employees re-hired within 60 days of termination must complete training requirement; no grace period applies.
 - ☐ Sales, Service, Parts, Warranty and Technicians (D350) employees re-hired 60 or more days after termination will have a 60-day grace period to complete training requirement.
- **Existing Employees Transitioning to Technician (D350).**
 - ☐ Sales, Service, Parts, and Warranty will not have a grace period.

*Note: Dealers are expected to monitor the employee training levels carefully. All employees not otherwise eligible for a grace period will be counted in determining the NINETY PERCENT (90%) of all employees being ONE HUNDRED PERCENT (100%) "Certified." Accordingly, dealership training levels should be monitored closely when an employee joins a dealership's staff.

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3.3 Base Qualifier – MSS XTime

The Mazda Service Scheduler (MSS/powered by XTime) Base Qualifier requires Mazda dealers to provide customers with the ability to schedule their service appointments online, at their convenience. All Mazda dealers must meet the MSS XTime enrollment requirement as of the end of the month prior to the MBEP Earning Month.

- a. A dealer is considered to meet the Mazda Service Scheduler (MSS) requirement by having an executed MSS contract with XTime and are paying all monthly fees. If a dealership received payment based on enrollment but is not paying monthly fees, the dealership will be charged back for the monies paid.
- b. Any dealership that is participating in the MSS program and cancels their MSS program participation at any point will be ineligible for participation in the MBEP program for all future months in which the dealer does not activate the MSS system. Dealers that re-enroll within the month will be considered enrolled for that month, or the month that they re-enroll. Re-enrollments must be approved by Mazda Service Field Operations.
- c. For purposes of meeting this Mazda Service Scheduler Base Qualifier, new dealers are defined in Section 3.3. New dealers must be enrolled in the MSS program prior to the end of the month following activation of the new dealer.

3.4 Base Qualifier – CX360

Dealers must meet minimum performance requirement for Record Health measurement during the 3 month period prior to the MBEP Earning Month. Due to pre-qualification timing, performance requirement established as follows: 75% April 2018 – June 2018 Record Health; 80% beginning July 2018.

| MBEP Earning Month | Survey Period | Objective |
|--------------------|---------------|-----------|
| July | Apr-Jun | 75% |
| Aug | May-Jul | 75% |
| Sep | Jun-Aug | 75% |
| Oct | Jul-Sep | 80% |

Note: Any dealer who has not established a minimum of three (3) months of record health history will automatically qualify for the record health base qualifier.

- d. The percentage of total records (RDRs and ROs) submitted by the dealership with an invalid email, missing email, or bounced/failed email will be calculated. This percentage will be subtracted from 100% to calculate the percentage of "healthy" records. Dealerships must achieve a minimum of 80% Record Health to be eligible for payment. Example:
 - A dealership has 20 RDRs and 100 ROs. 6 RDRs have invalid email addresses and 16 ROs have invalid email addresses. The dealer has no missing, bounced/failed emails.
 - The percentage of invalid email addresses is (6 RDRs + 16 ROs)/120 Total RDRs & ROs = 18.3%
 - Record Health = 100% - 18.3% (unhealthy records) = 81.7%, so dealer meets record health

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3.5 Base Qualifier – Mazda Courtesy Vehicle Program

The Mazda Courtesy Vehicle Program (MCVP) is designed to assist Mazda dealers in providing new Mazda vehicles for courtesy vehicle usage. The goal is to promote owner retention and Mazda owner loyalty. Increasing owner loyalty through MCVP will improve Mazda dealers' short and long-term business performance. In order to achieve the MBEP Courtesy Vehicle Program Base Qualifier, the dealer must maintain the number of units required in MCVP objective for a minimum of 80 percent of the days in rolling three calendar-month period ending the month prior to the MBEP Earning Month.

- a. Maintain active/available minimum number of vehicles in MCVP service per objective established at the beginning of each quarter.
- b. Dealership must have in active service the required number of Mazda loaner vehicles for a minimum 80% percent of days in a standardized rolling 90-day period. Mazda will determine the proper number of loaner vehicles required for each dealer based on warranty, recall, and customer pay repair order volumes. See Mazda Courtesy Vehicle program rules for details. Note: Percent of days to be reviewed at the start of each quarter and are subject to potential adjustment by MNAO.
 - A dealership's minimum loaner fleet size is calculated using a combination of warranty RO volume and customer pay RO volume, and may change periodically. Each dealer's minimum loaner fleet size will be communicated by Mazda Field Operations and the dealer's regional office.
 - Dealership must use the Mazda-identified courtesy vehicle management system as the identified software will track and report service fleet usage and track courtesy vehicle fleet operations.
 - In examples below:
 - Dealer A meets the MBEP requirement for the rolling 3-month period with 10 or more MCVP units in stock 81 of 90 days, exceeding the 80% requirement
 - Dealer B does not meet the MBEP requirement for the rolling 3-month period with only 68 days stocking 10 or more MCVP units, meeting only 76% and not achieving the requirement

| Required MBEP Stock | | | | | | | | | | 10 | | Target # days with MBEP Stock at or above requirement (80% of 90 days) | | | | | | | | | | | | | | | | | | | | 72 | |
|--|--|---|--|--|--|--|--|--|--|----|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--------------|--|----|--|
| Month 1 of Rolling 3-Month Period | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Month | | | |
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Stock Met | | | |
| Dealer A | | 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 8 8 8 10 10 10 10 10 10 10 10 10 10 10 10 10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 27 | | | |
| Dealer B | | 6 6 6 8 8 12 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 25 | | | |
| Month 2 of Rolling 3-Month Period | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Month | | | |
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Stock Met | | | |
| Dealer A | | 10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 30 | | | |
| Dealer B | | 12 12 12 12 12 12 12 12 12 12 12 9 9 9 9 9 9 9 9 9 12 12 12 12 12 12 12 12 12 12 12 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 21 | | | |
| Month 3 of Rolling 3-Month Period | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Month | | | |
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Stock Met | | | |
| Dealer A | | 10 7 7 7 7 7 7 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 24 | | | |
| Dealer B | | 12 12 12 12 12 12 12 12 12 12 12 12 12 12 12 12 12 12 8 8 8 8 8 9 9 9 12 12 12 12 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 22 | | | |
| Total Rolling 3-Month Period Days Achieved | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 3-Months | | | |
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Dealer A | | 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 2 2 2 3 3 3 3 3 3 3 2 2 2 2 2 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 81 | | | |
| Dealer B | | 2 2 2 2 2 3 3 3 3 3 2 2 2 2 2 2 2 2 1 2 2 2 2 2 2 2 3 3 3 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 68 | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Achieved | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Not Achieved | | | |

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- c. For purposes of meeting the MCVP Base Qualifier, new dealers are defined in Section 5.1 on page 21. New dealer MCVP objective participation as it pertains to MBEP will be set at one unit during the initial three months as an active Mazda dealer

NOTE: The MCVP stocking requirement for MBEP is completely separate and distinct from the utilization requirement under MCVP. MCVP requires vehicles to be in use in order to qualify for payment under MCVP. The MCVP stocking requirement for MBEP requires a certain number of units to be in stock. A dealer could potentially qualify under MCVP because units stocked are in use, but fail under MBEP because there are not enough units. Likewise, a dealer could qualify under the stocking requirement for MBEP because there are enough units in stock, but fail to qualify under MCVP because the units are not being used.

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Section 4: Earning Element Qualifiers

A dealership meeting all six Base Qualifiers in Section 2.1 may also need to comply with individual Element Qualifiers.

4.1 Earning Element – Brand Commitment: Retail Evolution Only

The MBEP program includes an Earning Element centered on Brand Commitment, and payments are structured based on dealer facility type (Exclusive Retail Evolution, Exclusive, Exclusive Showroom).

Eligibility:

Once qualifying as a Retail Evolution Dealership (per Mazda's RE Image Guidelines), a Retail Evolution Dealer must also meet the General Manager Qualifier set forth below. If the RE dealership does not achieve this additional Element Qualifier, they will be eligible for payment at the Exclusive facility level.

- All Retail Evolution dealerships will be required to have a Mazda-approved **Dedicated Exclusive General Manager (GM)**
 - a. GM requirement confirmed at time of annual Mazda Facility & Image Inspection and during any visit by a Mazda field manager. Mazda reserves the right to confirm GM at any time.
 - b. Mazda evaluation and approval process can take up to 30 days to complete.
 - If 2 or more unqualified candidates declined, Mazda reserves the right to disqualify dealer from this element for a period of time once approved candidate is in place.
- Requirement will take effect for the January 2019 MBEP Earning Month. Dealers will be required to have a dedicated exclusive GM approved by Mazda and in place no later than December 24, 2018.
 - a. Turnover: After December 24, 2018, Dealers will have 90 days from activation date to replace previous dedicated exclusive GM with a new dedicated exclusive GM approved by Mazda and in place.
 - Note: DP must notify region office (Zone Manager) within 5 days of any GM separation (terminated, resigned, incapacitated, death, etc.) This notification starts the 90-day GM replacement period. If DP fails to notify and region becomes aware of GM separation, region will initiate the start of the 90-day replacement period.
- Non-compliance Process:
 - a. If region believes GM at a dealership does not meet Dedicated GM requirement they will:
 - Notify DP in writing of the concern and ask DP to correct
 - If not resolved to region satisfaction within 30-days, region will notify corporate office and send certified letter to dealer outlining the concern(s) and the date the dealer was made aware. This starts a 60-day cure period. If not resolved after 60-day cure period, dealer is reclassified as exclusive, non-RE.
- Dealers not meeting requirements will be disqualified for RE level payout of Brand Earning Element, and will drop down to Exclusive dealer level payout.

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Definition of Exclusive General Manager (GM)

In addition to Official General Manager Requirements:

- Individual whose role is to oversee all aspects of the Mazda dealership operations
- GM may not serve in this or any capacity for any brand other than Mazda
- GM may be approved for up to two (2) Mazda dealerships in the same metro market
- GM will be located on-site with a dedicated office at the Mazda dealership
- GM must participate in Mazda Brand Immersion event (details/timing in development)
- A Mazda Dealer Principal may also be the Mazda General Manager as long as they meet all other exclusivity requirements
 - If the Mazda DP is acting as the Mazda GM, they may not act as GM for any other brand
 - If the Mazda DP is acting as the Mazda GM, they may only act as GM for up to two (2) Mazda dealerships in the same metro market
 - DP acting as GM must be available to make timely decisions on all key operational matters (Advertising, Customer Experience, Personnel, Inventory, Training, etc.)
 - In event DP does not meet any of these requirements, dealership will be subject to same warning and MBEP consequences as if a GM was not meeting requirements.
- The Mazda General Manager must be officially recognized on the Mazda Dealer Agreement
- The Mazda General Manager must have full decision making ability and full authority to act on behalf of the Mazda dealership with Mazda.

4.2 Earning Element Qualifier – Customer Experience

The Customer Experience Earning Element of MBEP encourages Mazda Dealers to engage in activities that promote and enhance the Mazda customer experience at the dealership. The Dealership must meet minimum performance levels in CX360 Index and Survey Health metrics. Note: Any dealer who has not established a minimum of three (3) months of record health history will automatically meet the CX360 Index and Survey Health requirements. Note: CX360 achievement for both Index and Survey Health will be based on calendar month-end; earnings will be calculated on retail sales occurring within the vehicle sales month close.

1. **Dealerships must achieve an index score that ranks in the Top 75th percentile of MBEP dealerships during the 3 month period prior to the MBEP Earning Month.** The percent of dealerships meeting the requirement is subject to quarterly adjustment. Note: If a dealership achieves a CX360 Index Score of 84 or higher, the dealership will not be subject to the percentile calculation (25th percentile or higher), but is still subject to the Survey Health requirements. Qualifying Index score is subject to quarterly adjustment.
 - a. The index score is based on equal weight of eight sales and service questions. Customers can answer questions on a scale of 0-10 (10 being the highest). For MBEP, responses to the eight questions are categorized into "Promoters" (9 and 10 responses), "Passives" (7 and 8 responses), and "Detractors" (0-6 responses). An index score for each question is calculated by subtracting the percentage of Detractors from the percentage of Promoters. The dealership's CX360 Index Score is then calculated by taking the average of the four sales index scores and the four service index scores:
 1. Sales: Finance Manager had my best interests in mind during the financing process
 2. Sales: A Mazda team member explained the vehicle features that matter to me
 3. Sales: A Mazda team member made me feel excited about my vehicle purchase
 4. Sales: I was educated on where to get more information about my vehicle
 5. Service: The effort to check in my vehicle met my expectations
 6. Service: Service Advisor treated me as a valued customer
 7. Service: I was satisfied with the amount of time it took to service my vehicle
 8. Service: I received good value for the cost of service

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- b. The bottom 5% of Sales surveys and the bottom 5% of Service surveys will be removed on the last day of each month at midnight Pacific Time. Survey removals are rounded down to a whole survey (1 survey removal for every 20 surveys). Surveys will be removed from each interval – not retroactive to prior intervals. The survey removal process will be applied prior to CX360 Index Score calculation and Percentile Calculation
- If a dealership's survey volume does not generate a whole survey removal, 100% of the dealership's surveys will be counted (example: 19 Sales surveys = 0.95 surveys, short of 1 whole survey removal)
 - No requests for survey removal outside of the defined process will be considered
- c. Dealerships must have at least one survey (sales or service) returned with any of the eight CX360 Index questions answered to calculate a CX360 Index Score
- In the unlikely event that a dealership does not have any sales or service surveys with at least one question during the quarter, dealership performance will not be able to be calculated for that period; therefore the dealership will not qualify for the CX360 component for that period.
 - Note that although only one survey needs to be returned, the number of survey invitations sent out is subject to record health.

Important Note:

Surveys that receive a "Yes" response to the question, "Did anyone show you or talk to you about this survey?" will be removed from score calculation.

Example Calculation of CX 360 Index score for one Sales question

5 customers respond to the Sales question, "A Mazda team member explained the vehicle features that matter to me" as follows:

- | | |
|---------------|----------------------------------|
| • Customer #1 | 8 out of 10 (Passive response) |
| • Customer #2 | 10 out of 10 (Promoter response) |
| • Customer #3 | 9 out of 10 (Promoter response) |
| • Customer #4 | 2 out of 10 (Detractor response) |
| • Customer #5 | 9 out of 10 (Promoter response) |

5 total survey responses: 3 Promoters, 1 Passive, 1 Detractor.

The percentage of Promoters is 3 Promoters divided by 5 total survey responses ($3/5=60\%$) The percentage of

Detractors is 1 Detractor divided by 5 total survey responses ($1/5=20\%$)

The CX360 Index score is the Percentage of Promoters less the Percentage of Detractors: $60\% \text{ Promoters} - 20\% \text{ Detractors} = 40 \text{ Index Score}$

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Example Calculation of the CX 360 Index Score for a Dealership

| <u>Question</u> | <u>Example Index Score</u> |
|--|----------------------------|
| Sales | |
| Finance Manager had my best interests in mind during the sales process | 71.4 |
| A Mazda team member explained the vehicle features that matter to me | 42.9 |
| A Mazda team member made me feel excited about my vehicle purchase | 42.9 |
| I was educated on where to get more information about my vehicle | 57.1 |
| Service | |
| The effort to check in my vehicle met my expectations | 81.2 |
| Service Advisor treated me as a valued customer | 87.5 |
| I was satisfied with the amount of time it took to service my vehicle | 62.5 |
| I received good value for the cost of service | 68.8 |
| Total | 514.3 |
| Divided by number of questions | 8 |
| Index | 64.3 |

Note: For the purpose of dealer percentile ranking, multiple decimal places will be utilized.

2. **Dealerships must achieve a minimum of 75% Survey Health during the 3 month period prior to the MBEP Earning Month to be eligible for payment of the CX Brand Element.**

a. The percentage of surveys received for a dealership with the following responses will be calculated and the percentage will be subtracted from 100% to determine the percentage of "healthy" surveys:

- "Please confirm that you are the owner or driver of this vehicle." NO
- "Did anyone show you or talk to you about this survey?" YES

Example: A dealership has 100 surveys. 1 response indicates they are not the owner or driver of the vehicle and 10 responses indicate that someone showed or spoke to them about the CX360 survey. The percentage of invalid surveys is $(1+10)/100 = 11\%$; $100\% - 11\% = 89\%$ -- dealer meets Survey Health.

Note:

There are conditions in which CX360 will not send a survey invitation to a customer. These conditions are intended to create an environment to achieve the following objectives: provide a positive customer experience in the process of gathering customer feedback, reduce survey fatigue, and capture accurate customer feedback. Below are the conditions in which invitations will not be sent to a customer:

- **Ineligible Customers:** E-Plan sales, Fleet vehicles, Branded VINs, Dealer-owned vehicles, ROs with Body Shop job codes, Buy Backs, Businesses, Dealership employees, ROs submitted as warranty claims outside the warranty period (e.g., recalls, goodwill, etc.), customers on Do Not Contact list. See CX360 for complete list of survey reject conditions.
- **Survey Quarantine:** There is a quarantine period of 90 days before an email address will be sent another survey invitation (for both Sales and Service invitations). For Service survey invitations, there is also a quarantine period if an email address has received a Sales survey invitation in past 30 days.
- Any other reject reason as outlined in the CX360 program parameters.

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Section 5: New and Terminated Dealers

5.1 Definition of New Dealer for the purpose of MBEP

MNAO defines a "New Dealer" as an active Mazda Dealer that satisfies one or both of the following two category descriptions:

1. **Open Point** – A dealer who is newly appointed to represent the Mazda brand in a previously unfilled Statistical Observation Area ("SOA") is considered a "New Dealer". A current Mazda dealer which is appointed to represent Mazda in a previously unfilled SOA through relocation shall not be deemed a "New Dealer."
2. **Ownership Transfers** – If there is an ownership transfer, in order to qualify as a "New Dealer" the acquiring persons (identified as the natural persons owning an interest in the dealership entity) must meet all the following criteria:
 - a. Acquiring owner(s) did not 1) own more than ten percent (10%) of the selling dealership, or 2) were not related to a person (spouse, parent/child, sibling, first cousin, grandparent/grandchild, aunt or uncle/nephew or niece) owning more than ten percent (10%) of the selling dealership; and
 - b. Acquiring owner(s) did not materially participate in the operations of the selling dealership (i.e. was not a Dealer Principal, General Manager, or other substantial role in selling dealership).

NOTE: MNAO reserves the right to amend or modify its New Dealer Definition in the event a transaction may circumvent the technical definition of New Dealer. All questions of eligibility or any other matter relating to interpretation, scope, or application of the "New Dealer" definition and related allowances will be determined by MNAO in its sole and absolute discretion. All such decisions shall be final.

5.2 Earning Element Objectives for New Dealers

New Dealers will receive objectives for Earning Elements based on the objective methodology outlined within this document.

5.3 Terminated Dealers

A terminating dealer will be paid the MBEP Payment earned, if any, for the most recent complete program month for the Brand Commitment and Customer Experience Earning Elements. There will be no payment for partially completed months. The payment will be applied to the parts statement of the terminating dealer.

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MAZDA BRAND EXPERIENCE PROGRAM



Section 6: Compliance and Audit Policy

6.1 Overview

The purpose of the Mazda Brand Experience Program (MBEP) is to encourage the Mazda Dealer Network to provide customer experiences that result in increased Mazda Owner Loyalty and Dealer Profitability. It is critically important that Mazda Dealers and Mazda have a high degree of confidence in the integrity of MBEP. Any non-compliance with MBEP Terms and Conditions or any attempt by dealers to create artificial results undermines the integrity of the program. This Compliance and Audit Policy applies to all MBEP program dealers.

6.2 General Compliance Policy Statement

Any action taken by a Mazda Dealership, its employees, consultants, or agents, which results in attainment of any MBEP Earning Element targets in a manner that does not comply with MBEP Terms and Conditions or is otherwise the result of efforts to manipulate or artificially influence result(s)/score(s) is prohibited and will be considered a violation of MBEP Terms and Conditions.

6.3 Acceptable/Unacceptable Practices

Dealers should take all steps necessary to advise all relevant dealer personnel of MBEP Terms and Conditions to help ensure dealer remains in compliance. Furthermore, Dealers should avoid anything that could be construed by Mazda as attempting to improperly attain a MBEP Earning Element target and payment.

Important Note: Because of the financial payment being made to Dealer, Dealer ownership and management are responsible for violations of these standards by their employees and agents, regardless of whether the Dealer ownership and/or management is aware of the violation at the time it occurs.

6.3a Examples of Acceptable/Unacceptable Practices

In addition to the examples set forth in section 6.6 below, you may refer to the Terms and Conditions for each MBEP Element and/or individual MNAO policies and procedures for specific examples of acceptable and unacceptable practices.

The examples are for illustration purposes only and are NOT intended to be a comprehensive list — any practice which violates the Policy, as per Mazda's sole and absolute discretion, is a violation.

6.4 Monitoring Policy Compliance

Compliance is monitored in a variety of ways, including, but not limited to:

- Observation by any Mazda personnel. Mazda will require that Mazda personnel report suspected manipulation.
- Report from a customer
- Report from a dealership employee
- Tracking of key data indicators for out-of-norm patterns that may indicate manipulation
- Review of MBEP Element specific trending reports (Red Flag Reports) for any unusual trends

6.4b Red Flag Reporting Examples

- Mazda tracks the long term Mazda Dealer Personnel User IDs, associated job codes and training records. Unusual patterns will be flagged.
- Mazda tracks all records associated with new vehicle VINs using internal and partner databases. Unusual patterns for a VIN in systems used to maintain VIN history such as RDRs, reversals, registrations or warranty will be flagged.
- Mazda tracks the service records of a vehicle VIN and may cross reference other internal and partner databases with the service VIN. Unusual patterns will be flagged.

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MAZDA BRAND EXPERIENCE PROGRAM



6.5 Compliance – Audit Program

All participating Mazda Dealers must acknowledge Mazda's Brand Experience Program (MBEP) Compliance and Audit Policy at time of MBEP enrollment via Terms and Conditions acknowledgement.

MNAO reserves the right to decide any question of eligibility or any other matter relating to the interpretation, scope, or application of the MNAO MBEP Policies or any program rules, at its sole and absolute discretion, and such decision shall be final and binding upon all Dealers. MNAO further reserves the right to:

- A. Inspect all Dealer records and interview individual(s) who reported suspected Manipulation and disqualify any item for non-compliance, **and**
- B. Chargeback a Dealer for any and all payments received for any non-compliant transaction
- C. Charge a Dealer for any and all MNAO costs and employee expense incurred as a result of an MNAO audit inspection,
- D. Remove a dealer from eligibility for programs such as Presidents Club and Gold Cup, **and**
- E. **Suspend a Dealer from MBEP program eligibility for one or more quarters**

To help ensure compliance with the MBEP Terms and Conditions, the Mazda Audit Department will regularly perform Field Audits of selected dealers.

Upon completion of any audit, the Mazda Audit Department will issue a formal written report to dealer management. The report will include a detailed summary of all identified program violations and potential chargeback amounts.

6.6 Violation and Forfeitures

Violations of the MBEP Compliance and Audit Policy will be categorized as either Type A or Type B as defined below:

Type A Non-Compliance

- Intentional/knowing non-compliance
- Falsification of data or documents
- High volume of similar non-compliance
- Repeat of Type B violations (within 12 months)
- Missing registrations (where it is not possible to validate the vehicle registration)
- Dead deals non-reversed
- Sale date discrepancies
- Export sales
- Unsupported Claims (e.g. lack of proper documentation, punch time support)
- Other substantial non-compliance as determined by MNAO

Type B Non-Compliance:

All non-compliance other than Type A

Penalties for Non-Compliance – Type A

1. First offense

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- A. Chargeback of the month(s) MBEP Element payments for any and all of the individual MBEP Element(s) affected by reversal of result(s)/score(s) found to be non-compliant. Chargeback for violations apply to payments for only the month(s) affected.
 - B. Chargeback of the month(s) MBEP Element payments for all other MBEP Element(s) dependent on the achievement of the MBEP Element chargeback for non-compliance.
 - C. Exclusion from dealership recognition programs and all associated benefits for the calendar year of audit resolution based on audit report date. Dealership recognition programs include, but are not limited to the following: President's Club, Gold Cup.
 - D. Dealership required to meet **Element Payment Validation** requirements for two full months from the date of audit resolution to receive payment based on audit report date. Element Payment Validation is a screening process of dealership actions prior to payment. If the dealership qualifies for payment based on MBEP program metrics, the dealership must have their activity validated to ensure no non-compliance actions resulted in metrics achievement.
 - i. MBEP Element payments will be held in escrow until Element Payment Validation is complete. Element Payment Validation will apply only to the Element(s) of non-compliance.
 - ii. Any MBEP Element(s) dependent on the Element Payment Validation will also be held in escrow until Element Payment Validation is complete.
 - iii. Element Payment Validation for payment will be completed within 90 days of the end of the MBEP month. Qualified payments upon successful Element Payment Validation will be made with the next MBEP payment.
 - iv. Two full months apply to months where the dealership would have qualified for payment based on MBEP program metrics. Months where the dealership did not qualify for payment based on MBEP program metrics do not count as a month for the Element Payment Validation requirement.
 - v. Failure to meet Element Payment Validation requirements will result in forfeiture of Element funds and any dependent Element funds.
 - vi. Upon successful completion of the two full months of Element Payment Validation, the dealership will no longer be required to continue with Element Payment Validation as long as the dealership remains compliant with program terms and conditions.
 - vii. MNAO reserves the right to exclude any personnel awards based on the non-compliance infraction. Personnel awards include, but are not limited to the following: trips (e.g., President's Club trip, Manager trips, etc.), financial incentives (e.g., Salesforce Loyalty Program, Customer Experience Expert Program), and award points.
2. Additional Offense(s)
- A. All penalties under the First Offense will be reapplied;
 - B. Dealer may be suspended from MBEP eligibility for one or more month; and
 - C. Dealership will be required to meet Element Payment Validation requirements for four full months from the date of audit resolution.

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Penalties for Non-Compliance – Type B

1. First offense
 - A. Chargeback of any and all of the individual MBEP Element(s) affected by reversal of result(s)/score(s) found to be non-compliant. Chargeback for violations apply to payments for only the month(s) affected.
 - B. Chargeback of the month's MBEP Element payment for all other MBEP Element(s) dependent on the achievement of the MBEP Element charged back for non-compliance.
2. Second Offense
 - D. All penalties under the First Offense – Type A will be applied
3. Three or More Additional Offense(s)
 - E. All penalties under the Two or More Additional Offense(s) – Type A will be applied

Important Notes

Any/all non-compliance with MBEP Terms and Conditions is considered an "Offense". Dealers may be considered to have additional offenses as a result of separate incidences of non-compliance that are not limited to the same violation as the First Offense or violation of the same MBEP Element.

If audit results determine a dealer to be in violation of the MBEP Terms and Conditions for multiple Elements in the same month, that dealer will be considered to have multiple offenses and will be subject to immediate suspension from MBEP eligibility for one or more months. Similarly, if audit results determine a dealer to be in violation of the MBEP Terms and Conditions for multiple months during the same audit, that dealer will be considered to have multiple offenses and will be subject to immediate suspension from MBEP eligibility for one or more months.

Due to the monthly qualifier and payment period program structure, offenses will be tracked for the duration of the MBEP program. If a dealer remains in compliance for any period of time, but subsequently has a second (or third) offense, penalties for the second (or third) offense will be applied. Offenses will not be reset regardless of the extent of time in compliance.

6.7 Dealer Initiated Appeal for review of Monthly Results/Program Achievement

A process is available to dealerships to address potential errors in an Earning Element(s) calculation(s) causing them not to achieve their objective(s).

Dealers must submit an Appeal to the Mazda Brand Experience Program (MBEP) manager.

- A. Dealer must provide clear and convincing evidence that an element was achieved in a manner consistent with the MBEP Terms and Conditions.
- B. The MBEP manager will review appeal documentation and make a conclusion as to "Accept" or "Deny" the appeal. Thereafter, the MBEP manager will send a formal written response to the dealership in question.
- C. If after receiving the results of the MBEP managers' review, the Dealer continues to believe their MBEP performance has not been accurately calculated or there are other factors affecting the dealers eligibility for payment under MBEP they have the option of submitting an Executive Appeal. All Operational Executive Appeals should be directed to the MBEP manager.
- D. The Mazda Executive Appeals Committee will review the information provided by dealer and make a decision as to "Accept" or "Deny" the 2nd level appeal. Thereafter, a formal written response will be sent to the dealer.
- E. If the Mazda Executive Appeals Committee "Accepts" the 2nd level appeal, a reimbursement for the amount of the chargeback already made will be initiated.

Important Notes

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- A. Dealer Operational Appeals must be made in writing to the national MBEP manager within 30 days of Quarterly Program close
- B. MBEP manager will notify dealer of appeal status within 90 days of receipt
- C. In the event of an Operational Executive Appeal, the Executive Appeal Committee will render a decision and provide response to dealer within 60 days of its receiving appeal
- D. Mazda reserves the right to charge the Dealer for any and all of Mazda's costs and employee expenses of auditing and/or administrative costs of adjusting records regardless of outcome of Dealer Appeal process

6.8 Dealer Audit Appeals

A two-level appeal process is available to dealerships who incur a chargeback for a violation identified through an Audit (see Important Notes below for timing requirements). The first appeal option is referred to as a Level 1 Appeal. The second appeal option is referred to as a Level 2 Appeal or Executive Appeal. Dealers must pursue a Level 1 appeal before pursuing a Level 2/Executive Appeal.

To initiate a Level 1 Appeal, Dealers must submit a written request for Appeal to the Mazda Manager, Audit.

- A. Dealer must provide clear and convincing evidence that a violation of MBEP Terms and Conditions did not occur.
- B. The Mazda Manager, Audit will review appeal documentation and make a conclusion as to "Accept" or "Deny" the appeal. Thereafter, the MNAO Manager, Audit will send a formal written response to the dealership in question. For dealers that have already been charged back and the appeal is "Accepted" by the Manager, Audit a credit will be processed on behalf of the dealer for the appropriate amount and the relevant items will be removed as "offenses".
- C. In the event the Dealer continues to disagree with the findings of the audit and/or Level 1 appeal decision, the Dealer has the option of submitting a Level 2/Executive Appeal. Dealer may submit any new supporting documentation if available.
- D. The Mazda Executive Appeals Committee will review the evidence provided by dealer and make a decision as to "Accept" or "Deny" the appeal. Thereafter, a formal written response will be sent to the dealer management.
- E. If the Mazda Executive Appeals Committee "Accepts" the appeal, a request to reimburse the dealer for the amount of the chargeback will be made (if previously charged back). If the Committee "Denies" the appeal, a chargeback will be processed for the impacted Dealer (unless previously charged back). If the Mazda Executive Appeals Committee "Accepts" the appeal, the violation will similarly be removed as an "offense."

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Important Notes

- A. All Appeals must be made in writing to the Mazda Manager, Audit within 30 days of the date on the Audit report or within 30 days of the date of a Level 1 Appeal decision
- B. The Audit Manager will evaluate the merits of the Level 1 appeal and notify the Dealer by letter of the final resolution within 90 days of receipt of all required information. Failure to respond within 90 days will not result in a removal of the chargeback amount.
- C. In the event Dealer continues to disagree with the audit findings and/or Level 1 appeal outcome, dealer may submit a final appeal to the Executive Appeals Committee ("Committee"). This appeal is referred to as a Level 2 or Executive Appeal. To pursue a Level 2/Executive Appeal, please submit a letter of appeal to the Audit Manager for review by the Committee, within 30 days of receiving the Audit Manager's Level 1 appeal decision. The Committee will review the Level 2/Executive Appeal and respond within 60 days with the final determination. Failure to respond within 60 days will not result in a removal of the chargeback amount.
- D. Mazda reserves the right to charge the Dealer for any and all of Mazda's costs and employee expenses of auditing and/or administrative costs of adjusting records regardless of outcome of appeal process

6.9 Training-Specific Compliance

In addition to general compliance shown in Section 6, the following compliance information applies to the Training Base Qualifier: Any action taken by a Mazda dealership, its employees, consultants, or agents, to modify any employee Certification or Primary Job Code as outlined in the Program Rules is unacceptable and will be considered a program manipulation and is subject to the Mazda Brand Experience Program (MBEP) Compliance and Audit Policy.

Important Note

Mazda will monitor eMDCS and Mazda State training records (See Monitoring Policy Compliance in the Overall Terms and Conditions). Any action taken which violate the goals and intention of the training element of MBEP may be considered a violation.

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Examples of the Acceptable and Unacceptable actions – Not an all-inclusive list

| Activity | Acceptable | Unacceptable |
|---|--|---|
| New Hires | Enters new hires into eMDCS and assigns appropriate primary job code on employees first day of employment | Non-entry of new hires into eMDCS. Does not assign job code on first day of employment |
| Avoiding Required Certification | Each employee completes his/her "Basic" Certification within the established time and/or grace period | Employee job codes unassigned or modified during quarter, which impacts training requirements |
| Assigning Employee Job Codes | Each employee is assigned the appropriate primary job code/title for the position they were hired for and entered into eMDCS | Employee is assigned a job code without training requirement then is moved to appropriate job code at the beginning of the next quarter |
| Transfers and Demotions | Employee receiving a promotion or demotion is assigned the appropriate primary job code within 24 hours | Employee is assigned a job code without training requirement then is moved to new job code at the beginning of the next quarter |
| Termination and Re-hiring | Employee is deemed to be underperforming by dealership and terminated. eMDCS Personnel File record is also "terminated" | Dealership "terminates" an employee record in the eMDCS Personnel File then reenters, "rehires", the same employee at the beginning of the next quarter |
| Individual Completion of Required Certification | Each employee must complete their own training | Any individual completing training on behalf of another individual |
| Sales Reporting | Employees engaged in Mazda business must be enrolled in the dealer personnel file (eMDCS) and must be trained as required of the program | Reporting sales made by individuals not in the Mazda eMDCS Dealer Personnel file using the User ID of an individual that is in the dealer personnel file to avoid training requirements |
| Avoiding Required Certification | Employees engaged in Mazda business must be enrolled in the dealer personnel file (eMDCS) | Removing or not entering an employee engaged in Mazda business into the dealer personnel file (eMDCS) |
| Use of Non- Employees | A non-employee (temporary or other) performing services for the Mazda business is enrolled in the dealer personnel file (eMDCS) and has met all training requirements. | Retaining non-employees (temporary or other) to perform services for the Mazda business, which would otherwise require training. |

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6.10 Survey Anti-Manipulation Policy

In addition to general compliance shown in Section 6, the following compliance information applies to the Customer Experience Element Qualifier.

The following policy applies to customer feedback requested by Mazda Motor of America, Inc., d/b/a Mazda North American Operations ("Mazda") from Mazda owners on behalf of Mazda dealerships that is utilized to evaluate and compensate dealer performance.

A. Purpose and Intent

To preserve the integrity and accurate representation of customer feedback in order to provide valid and actionable feedback for dealers and Mazda that supports the collective efforts of improving the customer experience and allows for accurate evaluation of dealership and dealer employee performance.

B. Dealer Responsibility

It will be every dealer's responsibility to ensure the integrity of their survey records by conducting self-audits of their sales and service survey and invitation records. Mazda may provide dealers with guidelines and best practices for conducting a self-audit, however, this will not guarantee that all forms of manipulation will be uncovered. The best approach to preventing manipulation in the dealership is to establish a policy and code of conduct among employees that preserves the integrity of customer data.

C. Definition and Types of Survey Manipulation

Survey manipulation can be defined as any action taken by a dealership employee to influence, misrepresent or modify a customer's survey response either directly or indirectly.

- Examples of direct manipulation include but are not limited to:
 - Altering a customer's email address
 - Falsely indicating that a customer would not provide an email address
 - Completion of a survey by a dealership employee or agent of the employee either with or without a customer's consent
- Examples of indirect manipulation include but are not limited to:
 - Requesting customers to give high scores
 - Offering incentives for completed surveys or high scoring surveys
 - Telling customers how to answer certain questions
 - Explaining to customers that pay plans are tied to survey scores
 - Using language to discourage customers from completing surveys

D. Identification of Survey Manipulation

The following methods will be utilized to trigger an investigation of survey manipulation:

1. Mazda will conduct monthly systematic reviews to identify irregular patterns in survey responses and invitation records
2. Reports of manipulation practices to Mazda by customers, dealership employees, or Mazda employees
3. Field auditor finding during review of dealership records

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E. First Offense

1. In instances where survey records are identified as suspect for manipulation, Mazda will notify the dealer in writing of the identified offense(s). Details of the suspicious records for direct manipulation or offense for indirect manipulation will be provided.
2. Dealer will investigate the suspected offense and respond in writing to their regional management within fifteen days as to their findings and what actions have been and will be taken to address the offense.
 - 2.1 Should dealer fail to respond to the warning or the response does not address the root cause of the manipulation, dealer may be subject to a field audit or placed on Element Payment Validation as outlined in the MBEP Terms and Conditions, section 6.6.1.D for the MBEP Earning Month during which the offense occurred. If scheduled for a field audit or placed on Element Payment Validation, dealer will not receive any CX Element Earnings until the resulting MBEP Index, Survey Health and Record Health scores can be verified.
3. Additionally, certain employees will be required to repeat the anti-manipulation web-based training course.

F. Subsequent Offenses

Upon Mazda's internal review, should a dealer be found to have further offenses of survey manipulation within twelve months of the first offense, the dealer will be subject to the following:

1. For MBEP qualification, dealer will be placed on Element Payment Validation as outlined in the MBEP Terms and Conditions, section 6.6.1.D.
2. At Mazda's discretion, dealer may be subject to an audit of survey and invitation records by a field auditor. Dealers not selected for a field audit will be required to submit documentation from Sales and Service transactions to Mazda for verification and/or Mazda may review individual surveys as part of the Element Payment Validation process.
3. Upon completion of field audit or validation process, any records identified as manipulated will be removed from dealer's MBEP Index, Survey Health and Record Health scores.
4. In the event the recalculated score does not qualify for the CX element for the MBEP Earning Month, dealer will not be eligible for payment of the CX element and/or any MBEP element requiring CX element qualification.
5. Upon removal of manipulated records from the MBEP Index, Survey Health and Record Health scores, should dealer still qualify for the CX element, dealer will be eligible for the CX element payment, however, payment will be reduced by up to \$500 for each manipulated record.
6. A third offense for a dealer in a twelve month period will result in disqualification from the MBEP CX element for one year.

Dealership chargeback examples for second offense:

Example A:

- Prior to field audit, Dealer A has an MBEP Index score of 85 with a Percentile rank of 47, a Survey Health score of 90 and a Record Health score of 86. MBEP calculated earnings for the CX element would be \$25,000 for the MBEP Earning Month.
- Upon completion of the field audit or validation process, 20 survey records are identified as having been manipulated.
- A recalculation of the MBEP score with the 20 surveys removed results in a new MBEP Index score of 81 with a Percentile rank of 23, a Survey Health score of 87 and a Record Health score of 82.
- Dealer A does not qualify for the CX element and will not receive a payout for the MBEP Earning Month.

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Example B:

- Prior to the validation process, Dealer B has an MBEP Index score of 88 with a Percentile rank of 70, a Survey Health score of 87.5 and a Record Health score of 91. MBEP calculated earnings for the CX element would be \$25,000 for the MBEP Earning Month.
- Upon completion of the validation process, 20 survey invitations have been identified as manipulated
- A recalculation of the Record Health score is 82. The MBEP Index, Percentile and Survey Health scores are not impacted as only Invitation records have evidence of manipulation.
- Dealer B still qualifies for the MBEP payout; however, the payment will be reduced by up to \$10,000 (20 x \$500). Payout of CX Element is now \$15,000 if full \$500 per record is charged (\$25,000 - \$10,000)

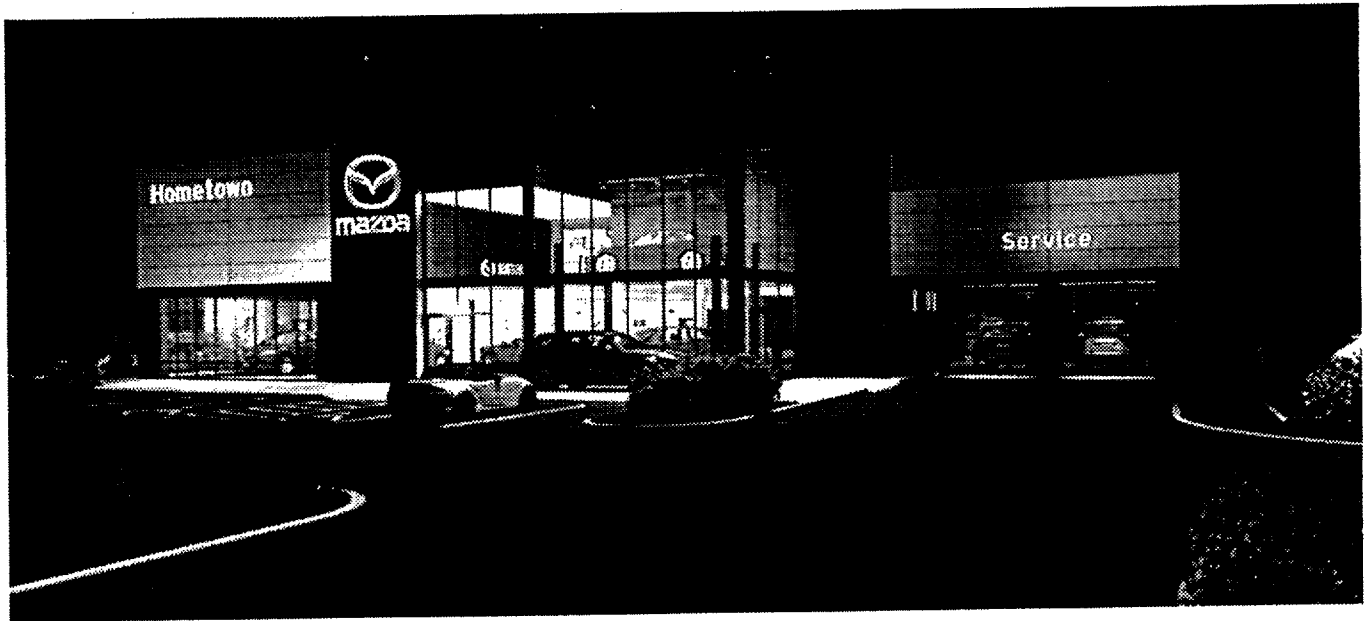


EXHIBIT C

CONSTITUTION AND BY-LAWS
OF THE
NEW JERSEY COALITION OF AUTOMOTIVE RETAILERS
(AS AMENDED SEPTEMBER 15, 2014)

CONSTITUTION

Article I

Section 1. This Constitution is made and adopted pursuant to the Act of Incorporation of the New Jersey Coalition of Automotive Retailers Association.

Article II

Section 1. This association shall be known as the New Jersey Coalition of Automotive Retailers, having offices at 856 River Road, Ewing Township, Mercer County, New Jersey, unless changed by a majority vote of all the Board of Trustees.

Article III. Object

Section 1. The object of this association shall be to afford mutual protection to its members and the public through the promotion of just and equitable principles in business. To oppose discriminatory legislation relating to the motor vehicle retailing trade, to promote model laws and the enactment of such legislation as will benefit the trade and the public, to promote and encourage sound business practices within the automotive industry, to promote and improve the dealer image by encouraging sound business ethics and practices, to promote highway safety and all its ramifications and, at all times, to conduct its activities in accordance with federal and New Jersey antitrust laws.

Not-for-Profit

Section 2. The association is nonpolitical and non-profitable in nature and shall issue no capital stock. It shall set its dues to provide an income sufficient to cover expenses and the amount necessary and proper to provide working capital and reserves to ensure continuity of the organization. No distribution of funds or other payment shall be made to the members, officers, or any other party except for services rendered, for supplies furnished, or for contributions for the purpose of furthering the objects of the association.

Section 3. The only event in which a member shall be entitled to any distribution of funds from the association shall be in the event of its liquidation or dissolution whereupon each member having paid his dues for the year in which the association shall be liquidated or dissolved, shall have the rights of distribution in liquidation or dissolution of any assets of the association in direct proportion the amount of dues so paid bears to all membership dues so paid by the member for said year, less operation expenses of the association to the date of inception of dissolution and reasonable and proper costs and expenses of dissolution.

Article IV. Powers

Section 1. The association shall have all the powers conferred by an Act of the State of New Jersey, entitled "An Act to Incorporate Associations Not for Pecuniary Profit," approved April 21, 1898, and the amendments or supplements thereto.

Article V. Amendments

Section 1. The Constitution may be amended by a vote of two-thirds of the voting members present at a regular or special meeting called for that purpose.

Section 2. Any proposal to amend this Constitution shall be presented to the Secretary in writing, detailing the purpose of said proposed amendment. The proposed amendment together with the suggested reasons for same shall be sent to each member of the association for their review at least fifteen days prior to the date of a meeting called for that purpose.

* * * * *

BY - LAWS

Article I. Membership

Section 1. ELIGIBILITY. Any individual, partnership, trust, firm or corporation engaged in selling new motor vehicles under franchise from an original manufacturer or original manufacturer's distributor, and licensed to be a dealer by the State of New Jersey shall be eligible for membership subject to conditions set forth by the Board of Trustees of this association. A member or prospective member must maintain a franchised retail establishment in the State of New Jersey and agree to conduct his operation in compliance with the principles and purposes of this association.

Persons, firms, partnerships, or corporations who operate a branch or subsidiary establishment may apply for separate and independent membership for each individual branch subsidiary.

Section 2. GENERAL MEMBERSHIP. The following categories of general membership are established:

- (a) AUTOMOBILE DIVISION – A member, or prospective member, must maintain a new car franchised retail establishment in the State of New Jersey.
- (b) TRUCK DIVISION – A member, or prospective member, must maintain a new truck franchised retail establishment in the State of New Jersey.

Section 3. ASSOCIATE MEMBERS. The Board of Trustees of the association may elect to establish Associate memberships, create various classes of Associate memberships, determine the requirements for admission to Associate membership, and fix the amount of dues to be paid. Associate members will not carry voting privileges, but an Associate member may attend all meetings of the membership unless specifically restricted to voting members, and may take advantage of the various services and facilities afforded by the association to its members in the event of dissolution.

Section 4. Application for membership shall be made in writing upon conditions approved by the Board of Trustees and must be accompanied with the amount of the membership fee as established by the Board of Trustees.

All applications for membership in this association shall be accepted or rejected by a majority vote of the Board of Trustees in accordance with such general or specific instructions and declarations of policy as may be enacted from time to time.

Section 5. Each general member is entitled to one vote in the affairs of the association. Those eligible to cast a vote for the dealership must be the proprietor, a partner, or an elected officer of the corporation who is recognized and acceptable to the manufacturer or manufacturer's distributor. Such qualified voting member shall be eligible for election to the Board of Trustees.

Section 6.

- (a) Membership in this association is not transferable.
- (b) Any member may withdraw from membership by giving written notice of withdrawal to association headquarters providing his or its dues have been paid and he is in good standing at the time.

Section 7. DISCIPLINE AND EXPULSION. Any membership in the association may be terminated for proper cause by a two-thirds vote of the entire Board of Trustees of the association, provided that such action may only be taken after the member involved has been afforded full opportunity to appear at a hearing before a Committee appointed by the Chairman to hear such complaints and such member is given at least ten days written notice of the proposed hearing. The Committee shall render their report to the Board of Trustees whose decision is final, subject to the member being afforded due process of law.

Section 8. FORFEITURE OF RIGHTS. All members expelled for any cause shall be deemed to have expressly waived, and by application for membership do expressly waive, all further rights of membership and all claims to recover dues or assessments paid to the association, and for damages for or because of expulsion.

Article II. Dues and Assessments

Section 1. The Board of Trustees shall have the power to establish an annual dues structure, which is deemed necessary to properly carry out the activities of this association and to accomplish its objectives. The Board is empowered to establish classifications of dues payments for its voting membership and associate membership.

When a newly appointed dealer applies for membership, he may be entitled to the minimum dues classification for his first year of membership. Upon approval by the Board of his initial application for membership, the Secretary shall inform such new member that his dues for the subsequent membership year shall be payable in accordance with established dues classification policy for all dealer members.

For taxation purposes, the fiscal year of the association is from January 1 to December 31 following.

The annual budget year of the association is from November 1 to October 31 following and thus dues shall become payable as of November 1 each year. Any applicant for new membership applying after May 1 (*second half of budget year*) shall be entitled to monthly prorating of dues for the remainder of the year.

Section 2. NONPAYMENT OF DUES. Any member who neglects to pay his or its annual dues by February 15 after the beginning of the fiscal year, and after due notice in writing has been sent by the Treasurer to such delinquents, shall be deemed to have suspended his or its membership. Any member not renewing his or its membership may also forfeit participation in any association service.

Section 3. ASSESSMENTS. Assessments may be levied on members only after a complete study of the need for same by the Budget Committee. The Budget Committee is charged with reporting the need for any assessment to the Board of Trustees for final action. An affirmative vote of two-thirds of the Board of Trustees is required to levy an assessment upon the membership.

Article III. Membership Meetings

Section 1. ANNUAL MEETING. There shall be at least one meeting of the membership of the association in each calendar year which should be known as the New Jersey Coalition of Automotive Retailers' Annual Meeting, and which may be held within or without the State of New Jersey at the discretion of the Board of Trustees as long as adequate facilities are available at the location selected.

The Annual Meeting shall be held on such dates as may be determined by the Board and at least fifteen days written notice of the date and place of the Annual Meeting shall be given to each member of the association.

Section 2. SPECIAL MEETINGS. Special meetings of the members may be called by the Chairman of the Board, by the Board of Trustees or at the request in writing of at least five percent of the membership of the association. Special meetings may be held within or without the State of New Jersey at the discretion of the Board so long as adequate facilities are available at the location selected.

Section 3. QUALIFICATIONS FOR MEMBERS ENTITLED TO VOTE. Only those voting members having paid up dues for a period including the date of any meeting to be held shall be entitled to have a vote and only one vote may be cast on behalf of each member of the association. Votes by a majority of the qualified members present at such a meeting at which a quorum is in attendance shall be sufficient for taking any action.

Section 4. QUORUM. At least ten percent of the voting members of the association attending a regular or special meeting convened as herein provided, shall constitute a quorum at any such meeting, but any less number attending may adjourn the meeting to a day and hour fixed by the members present.

Section 5. ORDER OF BUSINESS. Roberts Rules of Order shall apply.

Section 6. MAIL VOTE. The Board of Trustees shall have the power to submit any proposition by mail in the form of a Ballot, to the voting members of the association in good standing, the answers to which shall be returned by mail; the majority opinion of the votes received shall determine the action of the association, providing the total votes received shall be at least ten percent of the voting membership.

Article IV. Board of TrusteesSection 1. GENERAL POWERS

- (a) The administration of the affairs of the association shall be by a Board of Trustees, which may exercise all of the powers of the association, except such as are by statute, by the Certificate of Incorporation or Constitution, or by these By-Laws conferred upon or reserved to the members.
- (b) When considering and preparing any legislation the Board may cause same to be introduced in the Legislature only after the majority of the Board of Trustees has recorded a vote in its favor.

Section 2. THE NUMBER AND TENURE

- (a) The Board of Trustees shall consist of representatives from both categories of the general membership, as follows:
 - (i) Automobile Division – Representation on the Board of Trustees from Members of the Automobile Division shall consist of eight (8) Trustees and three (3) Alternate Trustees from each of the four geographical regions of the State, as follows:
 - Northern Region I: Bergen-Essex-Hudson-Passaic-Sussex Counties
 - Northern Region II: Hunterdon-Morris-Somerset-Union-Warren Counties
 - Central Region: Middlesex-Monmouth-Ocean Counties
 - Southern Region: Atlantic-Burlington-Camden-Cape May-Cumberland-Gloucester-Mercer-Salem Counties
 - (ii) TRUCK DIVISION – Representation on the Board of Trustees from members of the Truck Division shall consist of one voting member for each 25 members or fraction thereof, over and above the first 25 members in the Division.

In addition, members of the Truck Division shall elect a "Truck Committee Chairman" to serve as their representative on the Executive Committee, elected by a majority vote of the membership in said Division. Such representative shall also serve on the Board of Trustees and be entitled to one vote.

- (b) Any member of the Board of Trustees who is nominated and elected by the Board to the status of an officer of the association shall also be considered a voting member of said Board of Trustees for the period of his term of office. When the election of officers for the ensuing year is completed, those counties from which the elected officers have their places of business shall be entitled to elect an additional Trustee to fill the vacancy created by the officer being elected from that county.
- (c) The New Jersey NADA Director shall be considered a member of the Board of Trustees of the New Jersey Coalition of Automotive Retailers during his term as NADA Director with the privilege of vote.

- (d) All of the Presidents of the County Associations, or their designees, and the Chairman of any state association committee shall be ex-officio members of the Board of Trustees of the association during their term of office. Ex-officio members shall have the right and privilege to attend any and all of the meetings of the Board of Trustees with the right to enter into discussions, but shall not make any motions or vote in the determination of any matters to come before the Board.
- (e) Each Trustee shall have one vote. However, where an alternate Trustee has been duly elected, in the absence of the Trustee his alternate will be entitled to vote.
- (f) The term of a Trustee shall be two years, and shall be limited to a maximum of three such terms, except when elected to fill a vacancy. In order that the term of all Trustees shall not expire in the same year, elections shall be conducted as follows:
 - (i) AUTOMOBILE DIVISION – Beginning with Trustee elections in 2014, the four (4) geographic regions of the State shall elect part of their number of Trustees in alternate years as may be determined by the Board.
 - (ii) TRUCK DIVISION – The Board shall determine what part of the total number of Trustees shall be elected in alternate years so that the terms of the Trustees elected shall not expire in the same year.
- (g) A Past Chairman of the Board, as long as he remains active in business as provided in Article I, Section 1 of the Bylaws, shall hold membership on the Board of Trustees with the privilege of a vote.
- (h) The Board of Trustees shall be empowered to establish a "lifetime" classification of Trustee, if this be their desire. Each person eligible for the "lifetime" Trusteeship granted shall be considered on his individual merits and shall become effective only after a majority vote of the entire Board of Trustees elected at that time. "Lifetime" Trustees will not have the privilege of a vote, but hold this position in an advisory capacity only.

Section 3. ELECTION OF TRUSTEES

- (a) AUTOMOBILE DIVISION
 - (i) In each of the four (4) geographic regions, members of the Automobile Division in good standing having a place of business within that region, shall elect from their own group the Trustees which the region is entitled to under Section 2(a)(i) of this Article.
 - (ii) Said regional elections shall be conducted by the Secretary of the New Jersey Coalition of Automotive Retailers by a mail vote among those members of the State association eligible to vote in said region.
- (b) TRUCK DIVISION
 - (i) An election may be held—

- (1) At a general membership meeting of members of the Truck Division in good standing called for that purpose; or
- (2) By a mail vote election conducted by the Secretary of the New Jersey Coalition of Automotive Retailers among members eligible to so vote; and shall be held between April 1 and October 1 of each year. A certified copy of the results and count of such elections shall be filed with the Secretary by October 31.

Section 4. REMOVAL FROM OFFICE. A Trustee occupies a position of trust and confidence and stands in a fiduciary relation to the membership of this association. He has freedom to represent to the best of his ability and belief the interests of the members of his region, but he shall not use his position of trust and confidence to further interests conflicting with the interests of the association.

Any member of the Board of Trustees found guilty of violating the provisions of the Certificate of Incorporation or Constitution, the Bylaws, the policies, the procedures, or the practices properly adopted by the association may be suspended or expelled by a two-thirds vote of the Trustees at which a quorum is present, provided that a statement of the charges shall have been sent by registered mail to the last recorded address of such Trustee at least fifteen days before final action is taken thereon. This statement—and a copy of such statement sent to the nominal head of the County Association concerned, if any, shall be accompanied by a notice of the time and place of the meeting of the Board of Trustees at which such charges shall be considered and the Trustee shall have the opportunity to appear in person or by representative and present his defense.

A Trustee may also be recalled on a majority vote of the members in his geographic region.

If an elected Trustee is absent from three consecutive meetings of the Board, notification shall be given by the Secretary to the members in the geographic region involved together with the request the elected Trustee show cause why a replacement shall not be appointed or elected by that region.

Section 5. VACANCIES. If any vacancies shall occur in any office, or in the Board of Trustees, or in the Executive Committee, such vacancies shall be filled by a majority vote of the Trustees at the next regular or special meeting of the Trustees after such vacancies shall occur, and the office or member so elected shall serve for the unexpired term of officer or member to whose place he shall have been elected.

Article V. Trustees Meetings

Section 1. TERM. The term of office for a Trustee shall be two years and shall become effective November 1 of the year he is elected, which is the first day of the new budget year. There is no limit to the number of terms that a Trustee can serve.

Section 2. ORGANIZATIONAL MEETING. Elected Trustees shall meet at the call of the Chairman of the Board for the purpose of organizing and electing a slate of officers. The officers will be installed at the annual meeting.

Section 3. REGULAR MEETINGS. Regular meetings of the Board of Trustees will be held at least once quarterly or at the call of the Chairman of the Board. The Trustees are empowered to establish any "operating policy" in accordance with their needs at the time.

Section 4. SPECIAL MEETINGS. Special meetings of the Board of Trustees may be called by the Chairman of the Board or at the request of any ten Trustees. Notice of any special meeting shall be given at least two days previous thereto by written notice, by mail, or by telephone.

Section 5. QUORUM. Not less than twenty members of the Board of Trustees shall constitute a quorum and any less number attending will have the power to adjourn to a stated date and place.

The act of the majority of Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees.

Article VI. Officers

Section 1.

- (a) The Officers of the association shall be Chairman of the Board, Vice Chairman, Secretary, Treasurer, and President. All officers, with the exception of the President, shall be actively engaged in the automotive industry in New Jersey as a franchised dealer.
- (b) In addition, there shall be four Regional Vice Presidents who are elected for a one-year term to represent the four geographical regions of the State, as follows:
 - Northern Region I: Bergen-Essex-Hudson-Passaic-Sussex Counties;
 - Northern Region II: Hunterdon-Morris- Somerset-Union-Warren Counties;
 - Central Region: Middlesex-Monmouth-Ocean Counties;
 - Southern Region: Atlantic-Burlington-Camden-Cape May-Cumberland-Gloucester-Mercer-Salem Counties.
- (c) The Board of Trustees shall elect all of the above officers at its organizational meeting in May and they shall receive no compensation, with the exception of the President. The four Regional Vice Presidents shall be elected by the Trustees of each of the respective four regions of the state.
- (d) The Executive Committee, with the advice and consent of the Board of Trustees, shall engage a President who shall perform the administrative duties of conducting the operations of the association. The Executive Committee shall fix his rate of compensation.
- e) All officers may be elected by a majority vote of the Trustees in attendance at the time of election.

Section 2. The Chairman of the Board shall act as general executive officer of the association, preside at all meetings of the membership, the Board of Trustees and the Executive Committee. He shall appoint committees in accordance with such instructions as may be issued by the Board of Trustees, and he shall be responsible for their activities. The Chairman of the Board shall be an ex-officio member of all committees except the Nominating Committee and the Committee on Operations.

Section 3. The Vice Chairman shall aid the Chairman of the Board in the discharge of his duties and shall officiate as Chairman of the Board in the absence of that officer.

Section 4. The Secretary shall be responsible to keep correct minutes of all proceedings, and record same in the minute book of the association. He shall keep a complete record of all the members. He shall notify the members of this association of the time and place of all meetings.

Section 5. The Treasurer shall be responsible to install and operate under a budget system of financial control and to direct the handling of all funds and securities of the association in such accounts in such depository or depositories as may be specifically designated, or otherwise authorized or delegated, by the Board of Trustees. He shall be responsible to insure that officers and employees who sign checks and have custody of funds or securities shall give bond for such sum as shall be designated by the Board of Trustees. The association shall pay the premium upon such bonds.

He shall, under the direction of the Board of Trustees, supervise the disbursement of funds of the association by voucher, signed or countersigned by such of the Association's officers or employees as may be designated by the Board. He shall see that regular accounts are kept and submit same to the Board whenever so required.

He shall also prepare, or cause to be prepared, and submit at the regular annual meeting of the members, and at any other meetings of the members, Trustees or Executive Committee, a statement showing the financial condition of the association.

The Board of Trustees shall have made annually an audit by a Certified Public Accountant of the financial books and accounts of the association for each fiscal year.

The Trustees shall have no power to make the association liable for any debts exceeding the funds in the hands of the Treasurer and not otherwise appropriated, without the express authority of the general membership. Such authority shall be deemed given by a two-thirds vote of all voting members present at a regular or special meeting of the association, provided that at least ten percent of the total members entitled to vote are present.

Section 6. The President shall attend meetings of the Board of Trustees, but without privilege of a vote. He is responsible to the Board of Trustees, through the Chairman of the Board, for effectively carrying out approved policies and programs. He is further charged with keeping the Board informed of trends, practices or situations that will be of concern to the members and for recommending certain courses of action.

He shall attend meetings of the Executive Committee (without a vote) except where that body may be sitting in special session.

He shall have the supervision of all members of the staff. He shall also have supervision of the special counsels subject to such instruction as may be issued by the Board of Trustees. He is authorized to engage and fix the compensation of all employees on the office staff and make such changes as may be necessary in the personnel of the office in accordance with such instructions as may be issued from time to time by the Board of Trustees.

Section 7. REMOVAL FROM OFFICE. An officer occupies a position of trust and confidence and stands in a fiduciary relation to the membership of this association. At all times it is his responsibility to present to the best of his ability the interest of the entire membership of the association.

Any officer found guilty of violating the provisions of the Certificate of Incorporation or Constitution, the Bylaws, the policies, the procedures, or the practices properly adopted by the association may be suspended or expelled by a two-thirds vote of the Trustees at which a quorum is present, provided that a statement of the charges shall have been sent by registered mail to the last recorded address of such officer at least fifteen days before final action is taken thereon. This statement shall be accompanied by a notice of the time and place of the meeting of the Board of Trustees at which such charges shall be considered and the officer shall have the opportunity to appear in person or by representative and present his defense.

Article VII. Executive Committee

Section 1. There shall be an Executive Committee constituted as follows:

- (a) The five elected officers; namely, the Chairman of the Board, Vice Chairman, Secretary, Treasurer and President.
- (b) The four Regional Vice Presidents.
- (c) The Immediate Past Chairman of the Board.
- (d) The President of NJ CAR Services, Inc.
- (e) The Chairman of the NJ CAR Insurance Company, Ltd.
- (f) The Truck Committee Chairman.
- (g) The NADA Director.

Section 2. The Executive Committee shall be governed by the policies laid down by the Board of Trustees.

During the intervals between the meetings of the Board of Trustees, the Executive Committee shall possess and may exercise all the powers of the Board of Trustees in the management and direction of the affairs of the association in all cases in which specific direction shall not have been given by the Board of Trustees. All actions by the Executive Committee shall be reported to the Board of Trustees at its meeting next succeeding such action, and shall be subject to revision and alteration by the Board, provided that no rights of third parties shall be adversely affected by any such revision or alteration. Regular minutes of the proceedings of the Executive Committee shall be kept in the regular Minute Book of the Board, and all actions by the Executive Committee shall be reported to the members of the Board of Trustees not later than the next regular meeting of the Board.

Section 3. Eight members of the Executive Committee will constitute a quorum, and in every case, the affirmative vote of the majority of the members of the Executive Committee present shall be necessary to adopt or carry a motion or resolution. Each Executive Committee member shall be entitled to one vote, regardless of the number of offices held.

Section 4. The Executive Committee shall fix and declare its own rules of procedure, and shall meet as provided by such rules, or by resolution of the Board of Trustees, it shall also meet at the call of the Chairman of the Board, or at the request in writing of any three members of the Executive Committee upon fifteen days written notice sent by mail, or upon five days notice by telephone.

Article VIII. Standing Committees

Section 1. THE COMMITTEE ON OPERATIONS. The Committee shall consist of the five immediate qualified Past Chairmen of the Board of the association providing they still qualify as an active member in accordance with Article I, Section 1 of the Bylaws. In the event any of the five Immediate Past Chairmen of the Board do not qualify for active membership, the Committee will be composed of those so qualified.

The members of the Committee shall elect a chairman from among themselves.

The Committee shall meet at the request of two members of the Committee or at the request of the Board of Trustees, the Chairman of the Board or the President.

The Committee on Operations is a fact-finding committee responsible to the Board of Trustees. The Committee has no authority to initiate any changes.

The Committee shall review the activities of all internal operations and shall confer with the staff as to the execution of current operations and obtain suggestions as to possible changes, which might tend to increase the efficiency of operations.

After study and consideration the Committee on Operations shall report its findings to the Executive Committee with any recommendations, which the Committee considers desirable relating to the function of the officers, committees and the staff.

Section 2. MEMBERSHIP COMMITTEE. The Chairman of the Board may appoint a Membership Committee consisting of a Chairman and the four Regional Vice Presidents representing each of the four Regions, i.e., Northern I, Northern II, Central and Southern Regions.

It will be the duty of this committee to constantly endeavor to obtain new members in their respective territories; to assist in obtaining renewals of memberships; to assist in collection of dues; to keep association headquarters advised of changes in the status of dealers; to keep association headquarters advised as to members' "grass roots" thinking in their respective territories; and to make every effort to maintain membership at the highest level.

Section 3. LEGISLATIVE COMMITTEE. The Chairman of the Board shall appoint a Legislative Committee Chairman who shall then be a member of the Board of Trustees during his term of Chairmanship.

Section 4. BUDGET AND FINANCE COMMITTEE. The Budget and Finance Committee shall be constituted as follows: The Immediate Past Chairman of the Board as Chairman; the Chairman of the Board; the Vice Chairman; the Secretary; the Treasurer; four appointed members representing the four geographical regions and appointed for a four-year rotating term; the President of NJ CAR Services, Inc.; the Chairman of the NJ CAR Insurance Company Ltd.; and the President.

It shall be the duty of the Budget and Finance Committee to cause to be prepared as early as possible a final statement covering receipts and expenditures in relation to the budget for the budget year ending October 31; to receive recommendations from the Chairman of the Board and the President, to meet and prepare a budget for the budget year commencing November 1, and to present same for action by the Board of Trustees at the November meeting. It shall be the responsibility of this Committee to

make a semi-annual review of the budget and, if changes are recommended, present same to the Board of Trustees for approval.

With due consideration given to any recommendations of the Operations Committee, the Budget Committee is further charged with the responsibility of periodic review of compensation and fringe benefits presently being paid or contemplated to members of the staff and making necessary recommendations.

Section 5. NOMINATING COMMITTEE. The Chairman of the Board, shall appoint from the Past Chairmen of the Board a Nominating Committee of five or more members, giving due consideration to the membership of this committee being properly balanced as far as possible to equally represent the four regions: i.e., Northern I, Northern II, Central and Southern Regions.

The Nominating Committee shall meet no later than 30 days prior to the organizational meeting for the Board of Trustees and nominate for the ensuing year a slate of officers: a Chairman of the Board, a Vice Chairman, a Secretary, a Treasurer, and a President, to be submitted at the Board of Trustees' organizational meeting. It shall also be their responsibility to nominate four Regional Vice Presidents.

The Nominating Committee shall in each instance, with the exception of the Chairman of the Board, nominate one or more for each office. The nominations for officers shall be made known to the entire Board of Trustees at least seven days preceding the organizational meeting at which the Trustees will vote, to insure sufficient time for the consideration of nominations from the floor if a Trustee wishes to do so at the organizational meeting.

Qualified Trustees shall vote by either voice vote or written ballot, one at a time, for a Chairman of the Board, a Vice Chairman, a Secretary, and a Treasurer. The Chair shall recognize nominations from the floor for the above offices, if duly seconded.

In each instance, it will require a majority vote of the Trustees present to elect a person to office. In the election procedure, if no one person has received a majority on the first ballot, the person receiving the lowest number of votes will be dropped from nomination and a second ballot taken. This procedure shall be followed until one person receives a majority vote of all Trustees present and voting.

The same procedure will be followed the same day for the election of the Regional Vice Presidents, except that the Board may split into its respective regions to conduct their own elections as previously outlined.

The nominations of Regional Vice Presidents from the floor shall be accepted by the Chair at the full Trustees meeting when the formal nominations are presented by the Nominating Committee, and it is in order to nominate from the floor. A nomination from the floor can only be made by a Trustee from the affected geographical region.

Section 6. VACANCIES ON STANDING COMMITTEES. A vacancy on any standing committee shall be filled by the Chairman of the Board with the approval of the Executive Committee.

The Board of Trustees may create other committees and appoint or provide for the method of appointment or election of the members thereof.

The Chairman of the Board shall have the authority to appoint from time to time such other committees as he may deem advisable to carry out the instructions of the Board of Trustees.

Article IX. Amendments

Section 1. These Bylaws may be amended by two-thirds vote of all voting members present at a regular or special meeting of the association, providing that at least ten percent of the total members entitled to vote are present, the purpose of the amendment having been stated in the call for the meeting at least fifteen days prior to the date of the meeting.

EXHIBIT D

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PARTIES

1. NJ CAR is a trade association, the members of which are franchised new motor vehicle dealers in New Jersey.

2. Among the services NJ CAR provides to its members are education, training and advocacy before the Legislative and Executive Branches of the New Jersey government.

3. Periodically, NJ CAR participates as amicus curiae or as a party in litigation involving the interests of its membership.

4. Mazda Motor of America, Inc. ("Mazda") is a California corporation with its principal place of business at 200 Spectrum Center Drive, Irvine, California.

5. Mazda is a franchisor as that term is defined in the New Jersey Franchise Practices Act ("FPA"), N.J.S.A. 56:10-1, et seq. and has franchised 16 Mazda dealers in New Jersey that are members of NJ CAR.

6. NJ CAR has standing to bring this action to protect the legal rights of its members under the FPA from facial violation by Mazda and to protect the interests of all of its members generally in ensuring compliance with the FPA's provisions.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 (diversity of citizenship) as NJ CAR is a corporation of the State of New Jersey with its principal place

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of business in that State, whereas Mazda is a corporation of the State of California with its principal place of business in California. The amount in controversy exceeds \$75,000.00.

8. Venue in this District is proper pursuant to 28 U.S.C. §1391(b)(2), as the statutes in question represent the law of New Jersey, all Mazda dealers who will be impacted by Mazda's conduct do business in that State, and the events and omissions that give rise or relate to this lawsuit have and/or will occur there.

OVERVIEW

9. The FPA was originally enacted in 1971 (P.L. 1971 c. §356) to protect franchisees from harm due to the unequal bargaining power of franchisors. N.J.S.A. 56:10-2. As set forth by the New Jersey Supreme Court in Shell Oil Co. v. Marinello, 63 N.J. 402, 408-409 (1973), once a franchisee establishes a franchise, incurs the time and expense to develop the franchise and generates good will for the franchisor, the franchisee is at the mercy of the franchisor and subject to loss of the entire investment and good will in the franchise at the whim of the franchisor. The franchisor, by contrast, can easily replace any individual franchise without significant disruption to its business.

10. Over the 47 years since the original enactment of the FPA, the New Jersey Legislature has reaffirmed the unequal

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bargaining power between franchisors and franchisees, particularly with respect to motor vehicle franchises, and the need to protect motor vehicle franchisees, and their customers, from arbitrary and capricious action by franchisors. (N.J.S.A. 56:10-7.2) Over this period of time, the Legislature has passed numerous amendments and supplements to the FPA to address specific abuses of power by motor vehicle franchisors that have arisen.

11. One of the abuses the Legislature has addressed is the use of price differentials between dealers such that one dealer in New Jersey will have a lower effective cost for a similarly equipped vehicle than another dealer.

12. Franchisors, including Mazda, create these price differentials by using incentive programs which purport to reward dealers for achieving specified goals. Dealers who achieve the goals receive a payment for each vehicle the dealer sells. That payment reduces the cost of the vehicle to the dealer in comparison to dealers who are unable to achieve the goal.

13. Price differentials adversely affect dealers who do not benefit from them. The higher per vehicle costs incurred by such dealerships put them at a disadvantage when competing for customers over price. This competitive disadvantage affects a dealer's sales, ability to make a profit and viability. Price

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differentials thereby enable franchisors to create winners and losers among their dealers, force conduct by dealers that does not make financial sense and results in some dealers going out of business.

14. The competitive advantage that price differentials create for some of a franchisor's dealers but not others is not based on the market efficiency of the preferred dealers but on the cost advantage provided by the franchisor. It has been recognized on both the state and national levels that artificial price advantages so created are contrary to the public interest as they serve to reduce competition, adversely affect competitors and ultimately result in higher prices for goods and services. Additionally, any reduction in the number of motor vehicle dealers resulting from the effects of price differentials has the further effect of reducing consumer access to local, convenient access to warranty and safety recall repairs contrary to the public interest.

15. To rectify these abuses and their consequences, in 2011, the Legislature passed P.L. 2011 c. 66, §2, an amendment to N.J.S.A. 56:10-7.4(h) to require franchisors to sell all comparably equipped vehicles to all dealers in New Jersey at the same price without differential in discount, allowance, credit or bonus. Since 2011, N.J.S.A. 56:10-7.4(h) has prohibited franchisors:

"...to fail or refuse to sell or offer to sell such motor vehicles to all motor vehicle franchisees at the same price for a comparably equipped motor vehicle, on the same terms, with no differential in discount, allowance, credit or bonus..."

16. Another abuse addressed by the Legislature is demands by franchisors that dealers make facilities modifications at costs that cannot be financially justified, demands that are enforced by denial of per-vehicle incentives to dealers who do not make the facility modifications. Financially unjustified facilities requirements drive up operating costs for the dealers required to make them, costs that have to be recovered from their customers or be absorbed by the dealership. When a dealer is unable to either incur, absorb or recover the cost, such dealers risk being forced out of business, reducing competition in the marketplace and limiting consumer access to local, convenient warranty and recall service.

17. In response, in 2011, in addition to N.J.S.A. 56:10-7.4(h), the Legislature passed P.L. 2011 c 66 §2, N.J.S.A. 56:10-7.4(1) which prohibits franchisors from compelling dealers to make financially unjustified facilities modifications or from taking any action adverse to a dealer who does not make a financially unjustified facility modification.

18. N.J.S.A. 56:10-7.4(1) provides as follows:

"To require or attempt to require a motor vehicle franchisee to relocate his franchise or to

implement any facility or operational modification or to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit as a result of the failure or refusal of such motor vehicle franchisee to agree to any such relocation or modification, unless the motor vehicle franchisor can demonstrate that: (1) funds are generally available to the franchisee for the relocation or modification on reasonable terms; and (2) the motor vehicle franchisee will be able, in the ordinary course of business as conducted by such motor vehicle franchisee, to earn a reasonable return on his total investment in such facility or from such operational modification, and the full return of his total investment in such facility or from such operational modifications within 10 years; or (3) the modification is required so that the motor vehicle franchisee can effectively sell and service a motor vehicle offered by the motor vehicle franchisor based on the specific technology of the motor vehicle. This subsection shall not be construed as requiring a motor vehicle franchisor to guarantee that the return as provided in paragraph (2) of this subsection will be realized."

19. A further abuse addressed by the Legislature has been demands by franchisors that dealers use their facilities exclusively for the franchisor's brand even if there is sufficient room in the facility for other brands. Franchisors enforce these demands by denying incentives to dealers who do not have exclusive facilities. Here again, an effect of such requirement is to increase the operating costs of the affected dealers through the duplicative and inefficient use of their facilities, with the negative consequences for those dealers and the public interest noted above.

20. To rectify this abuse, in 2011, the Legislature enacted P.L. 2011 c 66 §2, N.J.S.A. 56:10-7.4(j), which provides as follows:

"To impose or attempt to impose any requirement, limitation or regulation on, or interfere or attempt to interfere with, the manner in which a motor vehicle franchisee utilizes the facilities at which a motor vehicle franchise is operated, including, but not limited to, requirements, limitations or regulations as to the line makes of motor vehicles that may be sold or offered for sale at the facility, or to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit, as a result of the manner in which the motor vehicle franchisee utilizes his facilities, except that the motor vehicle franchisor may require that the portion of the facilities allocated to or used for the motor vehicle franchise meets the motor vehicle franchisor's reasonable, written space and volume requirements as uniformly applied by the motor vehicle franchisor. The provisions of this subsection shall not apply if the motor vehicle franchisor and the motor vehicle franchisee voluntarily agree to the requirement and separate and valuable consideration therefor is paid."

MAZDA'S BRAND EXPERIENCE PROGRAM

21. In 2018, Mazda announced the introduction of the Mazda Brand Experience Program 2.0 ("MBEP"). A copy of a Quick Start Guide, outlining the provisions of the MBEP, is attached hereto and made a part hereof as Exhibit "A". The Program had a scheduled implementation date of July, 2018.

22. Pursuant to the MBEP, Mazda dealers can earn incentives (discounts or bonuses) for each vehicle a Mazda

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dealer sells based on the dealer's compliance with Mazda's MBEP requirements.

23. The incentives range from 6.5% of the Manufacturer's Suggested Retail Price ("MSRP") of a vehicle to 0% depending on the degree to which a dealer complies with Mazda's MBEP requirements. Up to 4.5% of the incentive is based on facilities and other requirements. Up to 2% of the incentive is based on Mazda's calculation of "customer experience" at the dealership.

24. On a vehicle with an MSRP of \$30,000, a 6.5% incentive comes to \$1,950. Such an amount creates a significant competitive differential between dealers who receive and who do not receive the incentive, both in terms of their ability to engage in intra-brand and inter-brand competition. 25. To qualify for the 4.5% facilities portion of the incentive, a dealer must have an exclusive Mazda facility which incorporates all Mazda required image elements, satisfy other "base elements" required by Mazda and employ a dedicated, exclusive Mazda General Manager.

26. A dealer who satisfies all of the foregoing requirements but not the dedicated, exclusive Mazda General Manager forfeits 1.7% of the incentive. Dealers with exclusive facilities, but not ones incorporating all Mazda image elements,

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lose another 1.8% and dualled dealers (facilities that include another brand) lose the entire 4.5%.

27. The 2% for "Customer Experience" is an all or nothing incentive in which some dealers receive a 2% incentive (discount or bonus) per vehicle sold based on their compliance with the "Customer Experience" criteria, while other dealers receive nothing.

MBEP VIOLATES THE FPA

28. On its face, the MBEP violates the foregoing provisions of the FPA as:

- it results in vehicle price differentials, up to 6.5% of MSRP, among dealers through incentives in different amounts paid for each vehicle, in violation of N.J.S.A. 56:10-7.4(h);

- it denies a benefit (a per-vehicle incentive) to dealers with dualled facilities in violation of N.J.S.A. 56:10-7.4(j); and,

- it denies a benefit (a per-vehicle incentive) to dealers who do not provide Mazda with exclusive, image compliant facilities despite the fact that Mazda has presented its dealers with no evidence that the cost of such facilities can be financially justified, in violation of N.J.S.A. 56:10-7.4(l).

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FIRST COUNT

29. NJ CAR repeats and realleges each and every allegation set forth in paragraphs 1 to 28 as if set forth at length herein.

2830. Pursuant to 28 U.S.C. §2201 and §2202, this Court has jurisdiction to grant a declaratory judgment in cases of actual controversy and to order such further relief as is necessary or proper in connection with such declaratory judgment.

31. The violations of the FPA in Mazda's MBEP and Mazda's implementation of that Program in New Jersey despite those violations has resulted in a case of actual controversy between Mazda and its New Jersey dealers.

3032. Accordingly, a declaratory judgment should be entered that (a) MBEP violates the FPA on its face; and (b) that it is unlawful for Mazda to implement it in New Jersey.

SECOND COUNT

33. NJ CAR repeats and realleges each and every allegation set forth in paragraphs 1 to 32 and makes same a part hereof as if set forth at length herein.

34. Mazda is currently engaged in conduct that violates the FPA and will continue to engage in such illegal conduct unless enjoined.

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35. Accordingly, injunctive relief to enforce the declaratory judgment is necessary and proper pursuant to 28 U.S.C. §2202.

36. There is no remedy at law that can address ongoing violations of the FPA in the absence of injunctive relief.

WHEREFORE, NJ CAR seeks judgment against Mazda as follows:

- a) Finding and declaring that MBEP violates the FPA on its face;
- b) Finding and declaring that it is unlawful for Mazda to implement the MBEP in New Jersey;
- c) Enjoining Mazda from implementing the MBEP in New Jersey;
- d) Awarding costs of suit, attorneys' fees and costs to NJ CAR; and,
- e) Granting it such other and further relief as the Court deems just and proper.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Plaintiff

By: /s/ Marvin J. Brauth
MARVIN J. BRAUTH
For the Firm

Dated: October 2, 2018

EXHIBIT A



MAZDA BRAND EXPERIENCE PROGRAM

As of July 3, 2018

Quick Start Guide

This Quick Start Guide is intended to be an overview of the Mazda Brand Experience Program ("MBEP"). For details on MBEP, please consult the Mazda Brand Experience Program Terms and Conditions ("Terms and Conditions") located in the MBEP website. To the extent that any discrepancy exists between the Quick Start Guide and the Terms and Conditions, the Terms and Conditions shall control.





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Changes from prior to new program, effective 7/3/18..... 3

MBEP Structure 5

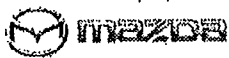
 Six Base Qualifiers.....5

 Two Earnings Elements6

 Qualifier Timing Summary7

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Changes from prior to new program, effective 7/3/18

MBEP program being restructured in support of Dealer Network Enhancement, Marketing Transformation and Retention Business Growth.

- Broadens brand qualification to support people, process, place and promotion
- Provides more earnings certainty for engaged dealers
- Less hurdles to earn maximum program amounts
- Eliminates sales objectives (push approach)
- Supports facility image upgrade
- Integrates with T3 marketing to support co-op utilization

| MAZDA BRAND EXPERIENCE PROGRAM | |
|--|---|
| Ending July 2, 2018 | Starting July 3, 2018 |
| | BASE QUALIFIERS |
| | 1. Facility Image & Type Inspection (Pass) 2. Training (Basic certification requirement) 3. MSS XTime (Enrollment requirement) 4. CX360 Record Health (% requirement) 5. Mazda Courtesy Vehicle Program (MCVP) Participation (Minimum Required Vehicles) 6. Co-Op (claiming requirement) |
| EARNING ELEMENT - Brand Commitment | EARNING ELEMENT - Brand Commitment |
| 1. Facility Image & Type Inspection (Passed Annual) 2. Training (Basic Certification Requirement) 3. MSS X Time (Enrollment Requirement) | <i>Dedicated Exclusive GM (RE only)</i> |
| EARNING ELEMENT - Customer Experience | EARNING ELEMENT - Customer Experience |
| 1. CX360 Index (Sales/Service Surveys, Record Health, Survey Health) 2. Mazda Courtesy Vehicle Program (MCVP) Participation (Minimum Required Vehicles) | Survey Health (minimum % requirement) Survey Index Score (Top 75% of dealers or 84+ Index) |
| EARNING ELEMENT - Sales Performance | |
| 1. Sales Performance (Vehicles Sales) | |
| EARNING ELEMENT - Service Performance | |
| 1. Full Circle Inspection (%RO Requirement) 2. Parts Penetration (% RO Requirement) | |

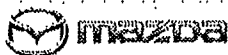
Note:

Bolded items have been discontinued.

Italicized items have been added.

What are the Major Changes?

- Six base qualifiers have been incorporated into the program -- 5 of which moved from earning elements and 1 of which was added.
- Earning elements have been simplified from four to two (sales and service performance elements were eliminated).
- With the removal of sales and service performance elements, there is no reliance on any Earning Element to earn another (e.g. previous program must have met CX to be eligible for sales or service.)
- Additional tier for Retail Evolution stores have been added to the Brand Commitment Element earnings potential.
- All payments will be monthly; quarterly payments eliminated.
- All qualifiers will be pre-qualified in month or quarter prior to earnings month.



MBEP Structure**Six Base Qualifiers**

Must be achieved to be eligible for any MBEP payment:

- 1) **Facility Image & Inspection** - All Dealerships must have passed the most recent Image Inspection and RE/Exclusives/Exclusive Showrooms must have passed the most recent Facility Type Inspection
 - **Qualifier Timing:** Status as of 25th of preceding Month
- 2) **Training** - 90% of active dealership employees identified by an eMDCS primary job code are required to complete 100% of "Certified" training courses as identified in the most current Learning Management System (LMS - currently Mazda State) Certification Catalog.
 - **Qualifier Timing:** Prior quarter pre-qualifies for next 3 months; sales close
- 3) **MSS X-Time** - Meet enrollment requirement
 - **Qualifier Timing:** Enrollment as of end of preceding calendar month
- 4) **MCVP** - Maintain number of units required in MCVP objective for minimum of 80 percent of the days in a rolling 3-month period. Only units that are placed in Mazda Courtesy Vehicle Program (MCVP) status (RDR type L) will be measured for qualification.
 - **Qualifier Timing:** Rolling 3 calendar month period pre-qualifies for next month
- 5) **CX360 Record Health** - Meet minimum 80% performance for record health measurement. Records impacting this metric are identified as: invalid, missing, bounced or failed email. The combined percentage of these records will be subtracted from the total number of records to the percentage of valid Sales and Service RO records.
 - **Qualifier Timing:** Rolling 3 calendar month period pre-qualifies for next month. Note: April-June objective remains at 75% and will transition to 80% as of July 2018.
- 6) **Co-Op- Consumer-Facing Funds Claiming**
 - **Qualifier Timing:** During the Co-Op claiming period that ends the month preceding the MBEP earnings month, submit claims for 100% of Consumer-Facing co-op funds; based on sales month close
 - i. July 2018-January 2019 will auto-qualify due to change in Co-Op program requirements.
 - ii. Example: July 2018 Co-Op fund claims will qualify dealer for February 2019 MBEP.

| Earnings Month | Survey Period | Objective |
|----------------|---------------|-----------|
| July | Apr-Jun | 75% |
| Aug | May-Jul | 75% |
| Sep | Jun-Aug | 75% |
| Oct | Jul-Sep | 80% |

| Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar |
|------------|-----------------------------------|-----|-----|-----|-----|------------------------------|--------------------|--------------|
| Co-Op fund | July Co-Op fund spending | | | | | | | |
| | July Co-Op fund claims submission | | | | | Documentation Review/Appeals | MBEP qualification | MBEP payment |



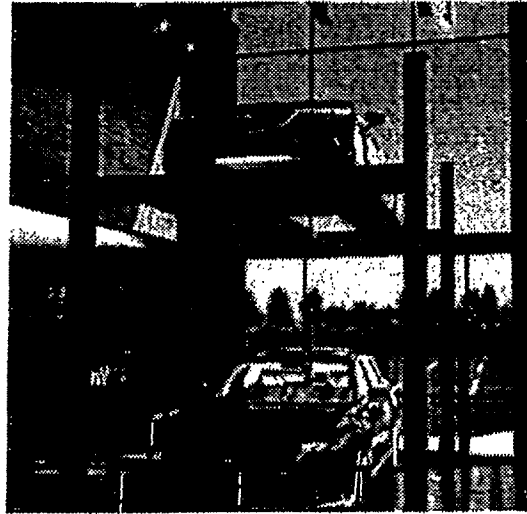
Two Earnings Elements

Paid monthly

1) Brand Commitment Element

1. Element Qualifier

- RE dealerships must achieve six base qualifiers and **Dedicated Exclusive GM** for RE level earnings
 - Achievement timing is based status as of 25th of previous month. Dealers must have GM in place by December 24, 2018 for January 2019 Earnings Month and will auto qualify from July through December 2018.



2. All other dealerships must achieve six base qualifications only; Payout potential varies by facility type

- Retail Evolution - 4.5%
 - RE stores achieving only base qualifiers and not dedicated GM will drop to Exclusive level payout potential; Status as of 25th of previous Month
- Exclusive - 2.8%
- ESR - 1.0%
- Dual - 0.0%

2) Customer Experience Element

1. Element Qualifiers - Dealerships must achieve six base qualifiers and CX360 qualifiers listed below. Rolling 3 calendar month period pre-qualifies for next month. Must achieve both:



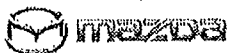
- **CX360 Survey Health** - minimum 75% performance
- **CX360 Index Score** - score must be in the Top 75% of dealers or have a CX score of 84 or higher

2. One payout level for all facility types - 2.0%



Qualifier Timing Summary

| Type | Item | Qualifier Timing |
|--------------------------|---|--|
| Base Qualifier | Facility Image & Type Inspection | Status as of 25th of calendar month preceding each MBEP Earning Month |
| | Training | Status as of last day of sales close quarter preceding MBEP Earning Month |
| | MSS X-Time | Status as of last day of calendar month preceding each MBEP Earning Month |
| | CX360 Record Health | Rolling 3 calendar month period preceding each MBEP Earning Month |
| | MCVP | Rolling 3-month period preceding each MBEP Earning Month |
| | Co-Op | Status as of end of 7 Sales close month periods preceding each MBEP Earning Month (e.g. July spend qualifies February earnings) |
| Element Qualifier | Brand Commitment - Dedicated Exclusive General Manager | Status as of 25th of calendar month preceding each MBEP Earning Month |
| | Customer Experience - CX360 Index Score and Survey Health | Rolling 3 calendar month period preceding MBEP Earning Month |



Other General Information

- Only vehicle selling Mazda dealerships are eligible for program; no service-only points.
- All payouts are VIN-specific and paid as a percentage of base MSRP, rounded to nearest dollar.
 - Only "R" coded (Retail) RDRs will qualify for payment. R code payments will be paid based on the sale date within the period, not the process date. Similarly, if an "R" coded RDR is reversed, the reversed sale will be subtracted from the period in which the sale actually occurred.
- CX360 Record Health, Survey Health and Index, as well as MSS XTime and MCVP programs are based on calendar month cutoffs; Facility Image & Type are based on cutoff as of 25th of month; Training and Co-Op are based on sales close dates.
- Dealers (GM or DP) must enroll in the Mazda Brand Experience Program through the MBEP website (located in MXConnect) acknowledging the MBEP Terms & Conditions.
- If any legal or administrative action is brought or threatened by any party to enjoin or prohibit any or all of MBEP, Mazda reserves the right, in its sole and absolute discretion, to suspend any and all payments pursuant to MBEP and/or to modify or cease to offer MBEP, with no liability whatsoever to any dealer. Should Mazda be prohibited by any federal, state or local law, rule or regulation or a determination by any judicial or administrative body from continuing MBEP in any or all state(s), MBEP shall automatically terminate and Mazda shall have no liability whatsoever to any dealer in the state(s) where MBEP is terminated. Further, Mazda reserves the right to cancel, amend, or revoke the policies, and/or any program at any time, for any or no reason, and the Dealer agrees that it will make no claim to Mazda for anticipated benefits or lost opportunity under a cancelled program or revised or cancelled policies.
- The Mazda Brand Experience Program does not apply to dealers in Hawaii, Kentucky, Vermont, or North Carolina.

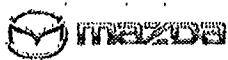


Program to Program Comparison

| MAZDA BRAND EXPERIENCE PROGRAM (MBEP) July 2016-June 2018 | | MAZDA BRAND EXPERIENCE PROGRAM (MBEP) As of July 3, 2018 | |
|--|--|---|--|
| BASE QUALIFIER REQUIREMENT | | | |
| NONE | | All Pre-Qualified 1. Facility Image & Type Inspections 2. Training 3. Mazda Service Scheduler/XTime 4. CX360 Record Health 5. Mazda Courtesy Vehicle Program (MCVP) 6. Co-Op Claiming | |
| EARNINGS ELEMENTS | | | |
| Performance Must achieve Customer Experience Element to qualify • Sales: 0.71% of Base MSRP per retail unit (\$188 average/retail) • Service: 0.71% of Base MSRP per retail unit (\$188 average/retail)* • Paid Quarterly | | NONE | |
| Brand Commitment 2.15% of Base MSRP EXCL; 1.01% of Base MSRP ESR; 0.2% of Base MSRP Dual • Facility: Pass most recent Type & Image Inspections • Training Certification • Mazda Service Scheduler (XTime) • Paid Monthly | | Brand Commitment 4.5% of Base MSRP RE; 2.8% of Base MSRP EXCL; 1.0% of Base MSRP ESR; 0.0% of Base MSRP Dual • RE must achieve: Exclusive Dedicated GM | |
| Customer Experience 1.82% of Base MSRP per retail unit (\$482 average/retail)* • CX360 Performance: Index, Survey Health, Record Health • Mazda Vehicle Courtesy Program (MVCP) • Must achieve both to qualify • Paid Quarterly | | Customer Experience 2.0% of Base MSRP per retail unit (\$530 average/retail)* • Must achieve both: CX360 Index, Survey Health • Paid Monthly • Pre-qualified | |
| POTENTIAL EARNINGS | | | |
| All Calculated on Base MSRP 5.39% Exclusive Dealers 4.25% Exclusive Showroom 3.44% Dual Dealers | | All calculated on Base MSRP 6.5% Retail Evolution Dealers 4.8% Exclusive Dealers 3.0% Exclusive Showroom 2.0% Dual Dealers | |

*MBEP payout examples are based on an MSRP of \$26,500





JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

| | | | |
|---|--|---|--|
| I. (a) PLAINTIFFS NEW JERSEY COALITION OF AUTOMOTIVE RETAILERS, INC. | | DEFENDANTS MAZDA MOTOR OF AMERICA, INC. | |
| (b) County of Residence of First Listed Plaintiff <u>Mercer</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i> | | County of Residence of First Listed Defendant <u>Out of State</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i> | |
| (c) Attorneys (Firm Name, Address, and Telephone Number) Wilentz, Goldman & Spitzer, P.A., 90 Woodbridge Center Dr., Woodbridge, NJ 07095 - 732-636-8000 | | NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) | |

| II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i> | III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i> | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|----------------------------|---|---------------------------------------|---------------------------------------|-----|-----|-----------------------|----------------------------|----------------------------|---|---------------------------------------|----------------------------|--------------------------|----------------------------|----------------------------|---|----------------------------|---------------------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i> <input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i> | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input checked="" type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> | | PTF | DEF | | PTF | DEF | Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | PTF | DEF | | PTF | DEF | | | | | | | | | | | | | | | | | | | | |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 | | | | | | | | | | | | | | | | | | | | |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | | | | | | | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | | | | | | | |

| IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i> | | | | Click here for: Nature of Suit Code Descriptions. | |
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| CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input checked="" type="checkbox"/> 196 Franchise | TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | OTHER STATUTES <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes | |

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| V. ORIGIN <i>(Place an "X" in One Box Only)</i> | | | | | | | |
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District <i>(specify)</i> | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File | |

| | | | |
|----------------------------|--|--|--|
| VI. CAUSE OF ACTION | Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity):</i> <u>28 U.S.C. §1332 and 28 U.S.C. §2201 and 2202</u> | | |
| | Brief description of cause: <u>Declaratory judgment action for violation of the New Jersey Franchise Practices Act, NJSA 56:10-7.4</u> | | |

| | | | |
|-------------------------------------|---|---------------------------------|---|
| VII. REQUESTED IN COMPLAINT: | <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. | DEMAND \$ <u>0.00</u> | CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
|-------------------------------------|---|---------------------------------|---|

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| VIII. RELATED CASE(S) IF ANY | <i>(See Instructions):</i> | JUDGE | DOCKET NUMBER |
|-------------------------------------|----------------------------|--------------|----------------------|

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|----------------------------------|---|
| DATE <u>10/02/2018</u> | SIGNATURE OF ATTORNEY OF RECORD <u>/s/ MARVIN J. BRAUTH</u> |
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|----------------------------|------------------|---------------|---------------------|--------------|-------------------|
| FOR OFFICE USE ONLY | RECEIPT # | AMOUNT | APPLYING IFP | JUDGE | MAG. JUDGE |
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